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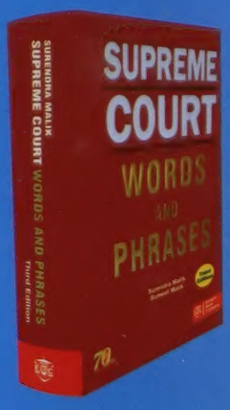

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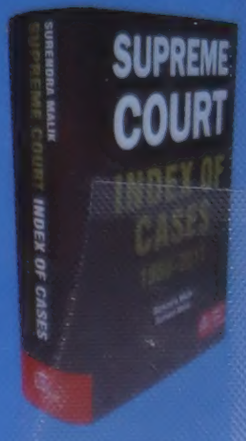

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SUPREME COURT CIVIL DIGEST™ 2014

"The law is the last interpretation of the law given by the last Judge." **—Anon.**

"Precedents keep the law predictable and so more or less ascertainable." **—Lord Devlin**

"There is no such thing as a judicial precedent on facts though counsel, and even judges, are sometimes prone to argue and to act as if they were." **—Bose, J., (1955) 2 SCR 1140, 1169**

"The law declared by the Supreme Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India." **—Syed Shah Mohammed Quadri, J., (2002) 4 SCC 388**

"The better wisdom of the Court below must yield to the higher wisdom of the Court above." **—O. Chinnappa Reddy, J., (1985) 1 SCC 260, 268**

"... the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted." **—Lord Diplock, (1972) 1 All ER 801, 874**

"Most of the decisions of the Supreme Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases."

—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22

"... a decision is not an authority for a proposition which did not fall for its consideration."

—S.B. Sinha, J., (2005) 4 SCC 649, para 256

"The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided." **—Arijit Pasayat, J., (2003) 7 SCC 197**

"The trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience."

— R.C. Lahoti, C.J., (2005) 8 SCC 534, para 112

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs." **—Pathak, C.J., (1989) 2 SCC 754, 766**

"A decision is available as a precedent only if it decides a question of law."

—L.M. Sharma, J., (1992) 1 SCC 489, 491

"... the law is, what the judges say it is since the power to interpret the law vests in the judges."

—S. Ratnavel Pandian, J., (1994) 3 SCC 569, 625

"Precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts." **—N. Santosh Hegde, J., (2000) 1 SCC 644, para 12**

"The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of the Supreme Court." **—N. Santosh Hegde, J., (2002) 4 SCC 234, para 22**

"... a judgment should be understood in the light of facts of that case and no more should be read into it than what it actually says." **—B.P. Jeevan Reddy, J., (1993) 2 SCC 368, 393**

"Judicial propriety, dignity and decorum demand that being the highest judicial tribunal even *obiter dictum* of the Supreme Court should be accepted as binding. ... But statements on matters other than law have no binding force." **—Krishna Iyer, J., (1975) 1 SCC 794**

"Taking recourse to the doctrine of stare decisis would be an imperative necessity to avoid uncertainty and confusion." **—U.C. Banerjee, J., (1999) 4 SCC 11, para 16**

"It is not everything said by a Judge while giving judgment that constitutes a precedent. ... The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent" **—K. Ramaswamy, J., (1996) 6 SCC 44, 51, 52**

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with
Table of Overruled, Reversed, Followed, etc. Cases
&
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PREFACE

We are happy to place before our readers the Supreme Court Civil Digest, 2014. In one volume this encapsulates the law declared by the Supreme Court of India on Civil Law in the year 2014.

For a busy practitioner the ability to be able to find the relevant ruling of law for his case and that too in a very short period of time is essential. It has been our endeavour to therefore thoroughly analyse each judgment of the Supreme Court and extract every possible point of law and then classify these in such a manner that they are easily accessible. When extracting rulings in cases which deal primarily with civil matters, points of law in other areas of law are necessarily extracted and reported in Supreme Court Cases and Supreme Court Cases (Civil). Therefore, when we compile this Digest those rulings are also included under their relevant headings.

We have also not restricted ourselves to one approach in classification of the rulings of law. Some rulings of law have been classified under statutory headings and cross-referenced to topics and others have been classified under topics and cross-referenced under statutory headings depending upon the most relevant and useful placement.

An analytical, systematic and comprehensive work such as this Civil Digest necessarily involves the collective effort of several persons. Each one of them has contributed in her or his own way. The merit and accuracy of this work therefore is the result of their dedication, commitment, sustained effort and teamwork. They have earned our warm appreciation and they, like us, can justly feel proud of this publication.

We equally appreciate the goodwill and continuous support received from our subscribers and readers. In trying to provide through SCC, SCC (Civ), the Digests and our electronic publications all the rulings of the Supreme Court we seek to fulfil our own commitment to serve the legal profession, as well as the cause of justice.

— S.M.
S.M.
S.M.

HOW TO USE THIS DIGEST

The utility and need of this Civil Digest Series is by now well established. In a single handy volume one gets the entire law laid down by the Supreme Court on Civil Law as reported in that year. Its reliability, comprehensiveness, accuracy and systematic analytical presentation has made it very popular. All the features that we have worked on and developed are listed below to assist the user to be able to extract the maximum benefit from this Digest.

- **Seamless searching of entire case-law of Supreme Court from 1950 : Box references**

To aid seamless searching from the Supreme Court Civil Digest to the Complete Digest and Octennial Digest, 2001-2008 cross-references in the Supreme Court Civil Digest have selectively been given to matching headings in the Complete Digest and Octennial Digest, 2001-2008. These cross-references have been placed in boxes so that these 'box references' are easy to spot. Thus the reader would get a holistic perspective of the case-law in that area, and be able to better judge the latest developments found in the Supreme Court Civil Digest.

- **Extensive Coverage and Cross-citations**

Important journals have been cross-checked and cross-citations of AIR, AIC, ALD, All LJ, ITR, STC, KLT, DLT, DRJ, ALR, KCCR etc. and of provincial and specialised journals have been included for easy reference. The Supreme Court Civil Digest, 2014 contains case-law from 5 volumes of SCC (Civil) for this year 2014.

- **Thorough Analysis**

Since mere coverage of the main point of the case is not enough, each case has been thoroughly analysed to extract all the rulings for which that case is a binding precedent. As already stated, all such rulings constitute the law of the land under Art. 141. Even obiter dicta of the Supreme Court have persuasive and guiding value and so have not been altogether ignored.

- **Systematic Arrangement**

Search amongst the rulings discovered would be difficult if they were not systematically arranged. Much effort has therefore been directed towards proper arrangement of the rulings

under both statutory and topic headings, interconnected by well-planned cross-references, supported by a synopsis wherever necessary.

- **Topic Approach**

The very nature of the problem at hand often suggests the topic or heading in which to look for the case-law. Just look for that topic, sub-topic or heading in the Topic and Statute Guide and you would find on the page indicated therein either the topic heading itself or a cross-reference to guide you further. Since the topics are placed alphabetically, you can open the Digest like a dictionary.

The advantages of this approach are many. It works even if one is not aware of the precise statutory provision. Also it makes the search comprehensive since case-law on related and connected sub-topics or statutes are found in the same location, especially useful when it is a State subject and rulings on the same aspect could have originated from statute of any of the other State. It also enables a principle based search.

Certain topics such as Administrative Law, Doctrines and Maxims, Interpretation of Statutes, Jurisprudence, Practice and Procedure, Public Interest Litigation, Precedents, Statute Law, Tort Law, etc. and Words and Phrases, are only amenable to topic approach.

Extensive use has been made of the topic approach so as to consolidate and present such of the cases decided by the Supreme Court under a Statute or Rule, which may be applicable under any other Statute or Rule in a similar situation. In a significant rationalisation and rearrangement of topics under the Complete Digest project, which has also been carried over to this Civil Digest, some of the new rationalised headings are:

➢ Agricultural Produce, Livestock and Markets

➢ Associations, Societies and Clubs

➢ **Family and Personal Laws** (which includes the secular law on this subject and Hindu Law, Muslim Law, Parsi Law, etc. as sub-headings)

➢ Property Law

➢ Rent Control and Eviction

➢ Tenancy and Land Laws

The aim is to ultimately bring this Civil Digest in consonance with the ***Complete Digest of Supreme Court Cases***™, so that it becomes a yearly appendicle/update to it and the two can be searched seamlessly.

The all-comprehensive topic "Words and Phrases" besides taking care of particular meanings covers the minute topics as well.

The "Topic and Statute Guide" gives a bird's eye view of the different topics and statutes covered in this Civil Digest. Special efforts have been made to extract rulings on, and references to, minor topics and headings, and to various concepts.

- **Quick Referencing by addition of Synopses**

Where the rulings under any article, section or sub-topic are several, they have been, for convenience of reference, further sub-divided under minor topic headings and a synopsis added for quick reference.

- **Statute approach**

This is the traditional approach of searching for the case-law from a specific known section or rule of any enactment or its rules. Just look in the Topic and Statute Guide or flip through the Digest itself taking guidance from the folio headings on the top of each page. If the matter has been put under any topic heading the cross-reference would guide you accordingly.

- **Statute approach aided by Cross-references**

The Constitution of India and the main statutes like CPC, 1908, Evidence Act, 1872, Transfer of Property Act, 1882 etc. have been dealt with as such. For the remaining statutes, the statute approach has been fully taken care of by elaborate cross-references to topic headings under which that statute is covered. So even if one starts one's search by statute he will reach the relevant rulings easily and conveniently.

- **Annotations and Editorial notes**

This Civil Digest also contains below several digest notes annotations in respect of earlier connected cases of the Supreme Court and High Courts, especially those appealed against, and many editorial notes and comments.

- **Case method approach**

The knowledge of any of the relevant Supreme Court ruling can lead to more. By looking for a pre-2014 ruling in the Table of Overruled, Reversed, Followed, etc. Cases will lead to the latest case of 2014 where cited for reason of it being on the same aspect. For any known ruling of 2014 itself see the Table of Cases Digested for the docket numbers where the other

related rulings would be located. The process can be repeated for each of the rulings of 2013 found.

The Table of Overruled, Reversed, Followed, etc. Cases can also be used by starting from any High Court, Privy Council or Foreign ruling, if it has been cited in 2014. This table also serves as a guide on the strength of any ruling by it having been overruled, distinguished, followed or relied upon. The Bench strength given below each digest note further helps in assessing the strength of any ruling.

The cross-citation tables guide you to SCC citations from other citations.

- **Table of Cases Digested**

The "Table of Cases Digested" affords a quick method for locating any decision by the name of either party. Since digest notes on the same or similar points are naturally placed proximate to each other, by locating the digest notes on any known case from the "Table of Cases Digested", the other relevant cases can easily be located. For convenience the docket numbers run continuously till the end, and are indicated at the top corners of the pages for easy reference.

- **Table of Overruled, Reversed and Followed, etc. cases**

The "Table of Overruled, Reversed and Followed, etc. cases" is a unique and valuable compilation. Since this table reflects the treatment accorded to all the cases cited in the judgments of the Supreme Court reported in one full year, one can verify the present standing of any case from the kind of treatment received by it, whether it be a case of a High Court, the Privy Council, the Supreme Court itself or a foreign case. Again, if one already knows a ruling relevant to one's case then one can easily find the latest cases of the Supreme Court in which that case has been referred to and which are thereby connected to that issue. The search of precedents by this method can be repeated for each of the connected cases by starting from the earliest Civil Digest and then following it in all the Civil Digests subsequent to the date of that decision. The chain that is built from case to case would bring out the true picture of development of the law on that particular issue. Moreover, with the availability of the first **Fourty** volumes of the ***Complete Digest of Supreme Court Cases***™, the process can also start from there, following it in all subsequent Civil Digests.

- **Notable Excerpts**

Another feature of considerable interest is the collection of Notable Excerpts from the learned judgments. These gems of sublime thought and felicitous expression embody the

aspirations and values of our developing law and deserve to be treasured and are worthy of being cited.

- **Complete Digest of Supreme Court Cases™**

This Civil Digest is complementary to the **Supreme Court Cases (Civil)™** which is exclusively devoted to the reporting of judgments of the Supreme Court, reportable and non-reportable on Civil Law, and also serves as an annual update to the ***Complete Digest of Supreme Court Cases™***. Increasingly there are a large number of cases which have been exclusively reported in SCC and SCC (Civ).

The convenience and advantages of consolidation made possible with the publication of the Supreme Court Decennial Digest, 1981-1990, the Quinquennial Digests 1991-1995 and 1996-2000 and the Octennial Digest, 2001-2008 are now extended by the release of the Second Edition of the ***Complete Digest of Supreme Court Cases™*** (since 1950 to date). Volumes 1 to 34 of this Complete Digest have been released and subsequent volumes are being processed; each volume will be up-to-date till the date of publication. In this edition many more useful features have been added. It is the most comprehensive and detailed digest of Supreme Court case-law. Besides the obvious advantage of having to consult only a single volume on any topic or statute instead of many, the consolidation at one place enables a more discerning study of all the rulings placed together. This Civil Digest extensively follows the classification system adopted in the 40 volumes of the ***Complete Digest of Supreme Court Cases™*** (SCCD), and thus simultaneously serves to update those volumes of SCCD.

- **Direct linkages to the Complete Digest**

To provide direct linkages from this Civil Digest to the case-law for 1950-2014 covered in SCCD, cross-references to the appropriate headings/sub-headings, page no. and Vol. no. in SCCD have been provided under sub-headings in the Civil Digest. Thus, after researching the case-law for 2014, one can go directly to the relevant volume and precise page no. in SCCD to access the entire Supreme Court case-law since 1950. Seamless searching has been enabled by means of **'box references'**, as mentioned at the outset.

- **Electronic medium**

The publishers of this Digest in 1996 created the revolutionary CD-Rom based research tool — SCC Online Casefinder. This was expanded to include the full-text of judgments and True Prints of cases.

In 2010 the SCC Online Web Edition was launched as a natural corollary to print based and CD-Rom based legal search tools and legal databases. At the time of going to print the SCC Online Web Edition contains case law from the Supreme Court of India, the Privy Council since 1836, the Federal Court of India, all High Courts, important tribunals and commissions, foreign jurisdictions like the US Supreme Court, the Canadian Supreme Court, South African Constitutional Court, West African Court of Appeal, Supreme Court of Bangladesh, Supreme Court of Sri Lanka, Supreme Court of Pakistan, Thailand Constitutional Court, WIPO domain disputes etc. and much more. It contains all Central Statutes, selected Rules and Regulations and selected State Statutes and selected Circulars & Notifications. The Web Edition also contains the Constituent Assembly Debates, Reports of the Law Commission of India and other bodies and Bilateral Treaties to which India is a party. It also contains the important International Treaties and Conventions.

Whereas a Digest in Print offers a structured view of an area of law, an electronic database on the hand a rather random one. We hope you find both useful in your research of the Law.

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Date on which sworn in

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The Digest of recent Supreme Court case-law and the latest judgments of the Supreme Court of India, not yet reported in SCC (Civ) are now available on our Internet site. This fully searchable database contains case-notes and judgments of recent decisions of the Supreme Court.

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LLJ	=	Labour Law Journal
LLN	=	Labour Law Notes
Mah LJ	=	Maharashtra Law Journal
MPLJ	=	Madhya Pradesh Law Journal
MWN	=	Madras Weekly Notes
PLJR	=	Patna Law Journal Reports
PLR	=	Punjab Law Reporter
RD	=	Revenue Decisions
RLR	=	Rajasthan Law Reporter
SCC	=	Supreme Court Cases
SCC (Civ)	=	Supreme Court Cases (Civil)
SCC (Cri)	=	Supreme Court Cases (Criminal)
SCC (L&S)	=	Supreme Court Cases (Labour & Services)
SCR	=	Supreme Court Reports
SLJ	=	Services Law Journal
SLR	=	Services Law Reporter
STC	=	Sales Tax Cases
TAC	=	Transport and Accidents Cases

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Shakambari & Co. *v.* Union of India, 1993 Supp (1) SCC 487, *cited*	2	425	431
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cited	2	425	431
Shakuntalabai *v.* Maroti Dewaji Wadaskar, First Appeal No. 339 of 2009, order dated 24-6-2009 (Bom), *reversed*	1	497	498
Shalimar Tar Products Ltd. *v.* H. C. Sharma, (1988) 1 SCC 70, *relied on*	3	662	672
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Yogendra Nath Naskar *v.* CIT, (1969) 1 SCC 555, *relied on*	4	777	785
Yogendra Pal *v.* Municipality, Bhatinda, (1994) 5 SCC 709, *referred to*	3	693	694
Yogesh J. Mehra *v.* Enercon GmbH, Notice of Motion No. 3564 of 2007 in Suit No. 2667 of 2007, order dated 31-10-2007 (Bom), *referred to*	3	59	75
Yograj Infrastructure Ltd. *v.* Ssang Yong Engg. and Construction Co. Ltd., (2011) 9 SCC 735 : (2011) 4 SCC (Civ) 864, *referred to*	3	59	90
considered	3	737	756

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Zandu Pharmaceutical Works Ltd. *v.* G. J. Desai, Civil Appeal No. 1034 of 1967, decided on 28-8-1969 (SC), *relied on*	3	710	725
Zandu Pharmaceutical Works Ltd. *v.* Mohd. Sharaful Haque, (2005) 1 SCC 122 : 2005 SCC (Cri) 283, *followed*	3	680	686
Zee Telefilms Ltd. *v.* Union of India, (2005) 4 SCC 649, *cited*	4	226	240
Zila Panchayat, Ghaziabad *v.* State of U. P., (2003) 5 AWC 3978, *reversed*	1	607	610

NOTABLE EXCERPTS

"A coordinate Bench is bound to follow the previously published view; it is certainly competent to add to the precedent to make it logically and dialectically compelling. However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied; whereas a coordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench."

— Vikramajit Sen, J. in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, para 6

"A genuine plea of bias alone could have caused the present Bench to withdraw from the matter, and require it to be heard by some other Bench. The oath of office of the Supreme Court requires the present Bench to go ahead with the hearing. Not hearing the matter would constitute an act in breach of the oath of office of Supreme Court, which mandates the Court to perform the duties of its office, to the best of its ability, without fear or favour, affection or ill will."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 9

"A Judge is to decide every dispute in consonance with law. If one is not free to decide in consonance with his will, but must decide in consonance with law, the concept of a Judge being an individual possessing power and authority, is but a delusion."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 15

"A party's posturing antics, aimed at bench-hunting or bench-hopping (or bench-avoiding), would not be allowed."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 11

"A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mogul or British rule, it has no place in independent India under our constitutional scheme."

— Chandramauli Kr. Prasad, J. in *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707 : (2014) 3 SCC (Civ) 798, para 13

"Abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that the Courts have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 193

"Affronts, jibes and carefully and consciously planned snubs would not deter the Court from discharging its onerous responsibility."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 11

"After a Court's verdict declaring a law enacted by Parliament or a State Legislature as illegal or void has attained finality, not once, never and never, has any legislative body ever disobeyed or disrespected an order passed by a Court declaring a legislation illegal or void."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 16.1

"An optional legislation that does not contain an unavoidable imperative cannot be stultified by the principles of Personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a Uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date."

— Ranjan Gogoi, J. in *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1 : (2014) 2 SCC (Civ) 417, para 13

"Article 39-A of the Constitution of India provides for holistic approach in imparting justice to the litigating parties. It not only includes providing free legal aid via appointment of counsel for the litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties."

— V. Gopala Gowda, J. in *Manoharan* v. *Sivarajan*, (2014) 4 SCC 163 : (2014) 2 SCC (Civ) 425, para 12

"Calculated psychological offensives and mind games adopted to seek recusal of Judges need to be strongly repulsed. The Supreme Court deprecates such tactics and commends a similar approach to other courts, when they experience such behaviour."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 185.1

"Considering the attitude of the petitioner before the Supreme Court, one wonders what would happen to the judicial system, if every court order had to be implemented, in the manner as the one in hand."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 57

"Correction of a wrong order would never put anyone to shame. Recognition of a mistake, and its rectification, would certainly not put the present Bench to shame. The embarrassment would only arise when the order assailed is actuated by personal and/or extraneous considerations, and the pleadings record such an accusation."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 7

"Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned."

— Vikramajit Sen, J. in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, para 13

"Courts are not required to twist the law to give relief to incautious or impetuous persons."

— Vikramajit Sen, J. in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, para 19

"Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal."

— Chandramauli Kr. Prasad, J. in *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707 : (2014) 3 SCC (Civ) 798, para 13

"Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available."

— T.S. Thakur, J. in *ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12, para 39

"Delay in disposal of the application by the Debts Recovery Tribunal and the appeal by the Debts Recovery Appellate Tribunal have the effect potentiality of creating corrosion in the economic spine of the country. It exposits a factual expose which is not only perplexing but ushers in a sense of puzzlement which in the ultimate eventuate compels one to ask: "How long can the financial institutions suffer such procrastination? How far can the public interest be put to hazard because of small, and sometimes contrived individual interest? To what extent can the defaulters be given protection in the name of balancing the stringent powers vested in the banks and the statutory safeguards prescribed in favour of loanees? Even assuming there are legal lapses and abuses, how long can the statutory tribunals take to put the controversy to rest being oblivious of the fact that the concept of flexibility is insegregably associated with valuation of any asset?" One is bound to give a wake-up call and we so do by saying "Tasmat Uttistha Kaunteya"; "Awake, Arise, 'O' Partha"."

— Dipak Misra, J. in *Standard Chartered Bank* v. *Dharminder Bhohi*, (2013) 15 SCC 341 : (2014) 5 SCC (Civ) 243, para 1

"Disobedience of orders of a court strikes at the very root of the rule of law on which the judicial system rests. Judicial orders are bound to be obeyed at all costs. Howsoever grave the effect may be, is no answer for non-compliance of a judicial order. Judicial orders cannot be

permitted to be circumvented. In exercise of the contempt jurisdiction, courts have the power to enforce compliance of judicial orders, and also, the power to punish for contempt."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 185.2

"Estoppel is a doctrine based on fairness. It postulates the exclusion of the truth of the matter. All for the sake of fairness."

— J.S. Khehar, J. in *Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196 : (2014) 2 SCC (Civ) 163, para 35

"In case an individual's fundamental rights (or other legal rights) are found to have been violated, the Government of India, or the State Government concerned, or the instrumentality/institution concerned, is directed to restore to the individual, what is due to him. The Government (or the instrumentality/institution) concerned, which is directed to extend benefits denied to an individual(s), has always honourably obeyed and implemented the Court orders, gracefully."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 16.3

"In the present era, the legal profession, once known as a noble profession, has been converted into a commercial undertaking. The litigation has become so expensive that it has gone beyond the reach and means of a poor man. For a long time, the people of the nation have been convinced that a case would not culminate during the lifetime of the litigant and is beyond the ability of an astrologer to anticipate his fate."

— Dr B.S. Chauhan, J. in *Rameshwar Prasad Goyal, In re*, (2014) 1 SCC 572 : (2014) 1 SCC (Civ) 483 : (2014) 1 SCC (Cri) 481 : (2014) 1 SCC (L&S) 192, para 19

"It has become the definite attitude of the officials not to take any responsibility even for petty issues and would waste public money approaching the Supreme Court. Government departments would spend any amount on litigation instead of paying a petty amount to the other party. We direct that the expenses of the litigation shall be incurred by the Managing Director personally who has signed the affidavit in support of the petition and it shall not be taken from the State."

— Dr B.S. Chauhan and J. Chelameswar, JJ. in *Haryana Dairy Development Coop. Federation Ltd.* v. *Jagdish Lal*, (2014) 3 SCC 156 : (2014) 2 SCC (Civ) 265, paras 1 and 6

"It is imperative for the Court to diligently distil and then apply the ratio of a decision."

— Vikramajit Sen, J. in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673, para 6

"Judicial restraint requires the Court not to deal with issues of constitutional interpretation unless such an exercise is but unavoidable."

— Ranjan Gogoi, J. in *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1 : (2014) 2 SCC (Civ) 417, para 16

"Justice is based on law and law in modern democracy is too complicated, therefore, it is not possible for an ordinary litigant to raise his voice without engaging a lawyer. In case the lawyer is negligent or not willing to assist the court, or fails to perform his duty towards the court, loss to the poor litigant is beyond imagination."

— Dr B.S. Chauhan, J. in *Rameshwar Prasad Goyal, In re*, (2014) 1 SCC 572 : (2014) 1 SCC (Civ) 483 : (2014) 1 SCC (Cri) 481 : (2014) 1 SCC (L&S) 192, para 18

"Live-in or marriage-like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal."

— K.S.P. Radhakrishnan, J. in *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440, para 1

"Market abuse is a serious financial crime which undermines the very financial structure of this country and will make imbalance in wealth between haves and have-nots."

— K.S.P. Radhakrishnan and J.S. Khehar, JJ. in *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 5 SCC 429 : (2014) 3 SCC (Civ) 190, para 36

"Marriage as a social institution is an affirmance of civilised social order where two individuals, capable of entering into wedlock, have pledged themselves to the institutional norms and values and promised to each other a cemented bond to sustain and maintain the marital obligation."

— Dipak Misra, J. in *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640 : (2014) 3 SCC (Civ) 774 , para 1

"Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. But, this cannot be a reason for the appellant to abandon her."

— V. Gopala Gowda, J. in *Kollam Chandra Sekhar v. Kollam Padma Latha*, (2014) 1 SCC 225 : (2014) 1 SCC (Civ) 168, para 42

"Municipalities need funds for carrying out the various welfare activities and for the said purpose, it can always utilise its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented."

— K.S.P. Radhakrishnan, J. in *Nagar Panchayat, Kurwai* v. *Mahesh Kumar Singhal*, (2013) 12 SCC 342 : (2014) 1 SCC (Civ) 308, para 6

"Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an

adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law."

— T.S. Thakur, J. in *ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12, para 38

"Offences when committed in relation with banking activities including offences under Sections 420/471 IPC have a harmful effect on the public and threaten the well-being of society. These offences fall under the category of offences involving moral turpitude committed by public servants while working in that capacity. Prima facie, one may state that the bank is the victim in such cases but, in fact, society in general, including customers of the bank are the sufferers."

— S.J. Mukhopadhaya, J. in *CBI* v. *Jagjit Singh*, (2013) 10 SCC 686 : (2014) 1 SCC (Civ) 98, para 15

"One wonders what is it that a Judge should be made of, to deal with such litigants [such as the petitioner] who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 188

"Orders passed by the Supreme Court on disputes between States or between Union and States have unfailingly been accepted and complied with, despite the seriousness of the consequences, emerging from such orders. The settlement of such disputes by the Supreme Court has not ever earned scorn, disdain, disrespect or denigration of the parties concerned."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 16.2

"Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. The Juvenile Justice (Care and Protection of Children) Act, 2000 is a small step in reaching the goal enshrined by Article 44 of the Constitution."

— Ranjan Gogoi, J. in *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1 : (2014) 2 SCC (Civ) 417, para 13

"Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force."

— Chandramauli Kr. Prasad, J. in *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707 : (2014) 3 SCC (Civ) 798, para 16

"... The relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household,

being based on law. But live-in relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end...."

— K.S.P. Radhakrishnan, J. in *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440, para 37

"...the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationships or, marriage-like relationship or de facto relationships."

— K.S.P. Radhakrishnan, J. in *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440, para 32

"The availability of justice to all which is a social goal, must be made a reality. However, it cannot be done unless there is an easy access to the Bench and the Bar both. If the court is not working properly or if the Bar is not rendering proper assistance, it would lead to a travesty of justice and destroy the basic democracy, which would tantamount to failure of administration of justice. The people and particularly, the common man would cease to be beneficiaries of democracy."

— Dr B.S. Chauhan, J. in *Rameshwar Prasad Goyal, In re*, (2014) 1 SCC 572 : (2014) 1 SCC (Civ) 483 : (2014) 1 SCC (Cri) 481 : (2014) 1 SCC (L&S) 192, para 18

"The basic fundamental principle is that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded."

— K.S.P. Radhakrishnan, J. in *Nagar Panchayat, Kurwai* v. *Mahesh Kumar Singhal*, (2013) 12 SCC 342 : (2014) 1 SCC (Civ) 308, para 3

"The court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. "free scientific research". This approach is particularly needed while deciding the issues relating to gender justice."

— A.K. Sikri, J. in *Badshah* v. *Urmila Badshah Godse*, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51, para 18

"The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority and does not have to be separately or additionally enjoined upon the fora concerned. The importance of a judicial approach in judicial and quasi-judicial determination lies in the fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that

sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge."

— T.S. Thakur, J. in *ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12, para 35

"The fundamental rights embodied in Part III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well-being of citizens."

— Ranjan Gogoi, J. in *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1 : (2014) 2 SCC (Civ) 417, para 16

"The history of humankind has been one of conquests over the inevitable. The resignation to fate has never been the accepted philosophy of human life. Challenges have to be met to make human life more meaningful. This is how the constitutional philosophy behind Article 21 has been evolved by the Indian courts over a long period of time."

— Ranjan Gogoi, J. in *S. Rajaseekaran* v. *Union of India* (2014) 6 SCC 36 : (2014) 3 SCC (Civ) 36, para 23

"The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault? The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues a litigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs" ."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 191

"The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue. When there is a conflict between a "conclusive proof" envisaged under law based on a presumption and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former."

— Chandramauli Kr. Prasad, J. in *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576 : (2014) 2 SCC (Civ) 145, para 17

"The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on

a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law."

— A.K. Sikri, J. in *Badshah* v. *Urmila Badshah Godse*, (2014) 1 SCC 188 : (2014) 1 SCC (Civ) 51, para 16

"The learned counsel who represented the petitioner were surely insincere to the cause of justice when they drummed their assertions that [the Court had directed detention of petitioner herein for non-compliance with court orders without any notice or opportunity to explain himself or show cause] without blinking an eye; since they were aware that the factual position was otherwise. For the learned counsel for the petitioner to advance such submissions, to state the least, was unimaginable. They surely ought to have known better because they had appeared in the contempt proceedings in the defence of the contemnors."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 44

"The number of similar litigants, as the parties in this group of cases (Sahara Group related cases), is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 188

"The oath of office of the Supreme Court requires the Bench to discharge its obligations, without fear or favour. The Supreme Court therefore also commends to all courts, to similarly repulse all baseless and unfounded insinuations [of bias], unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 137

"The object of establishment of a Muslim court may be laudable but there is no doubt that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the corpus juris of the State."

— Chandramauli Kr. Prasad, J. in *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798, para 15

"The power of arrest and detention can be exercised, as and when the Supreme Court is satisfied, in the facts and circumstances with which the Court is confronted in a given case, that the above means should be adopted for the execution of its orders."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 90

"The power to adjudicate must flow from a validly made law."

— Chandramauli Kr. Prasad, J. in *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798, para 13

"The provisions in Articles 129 and 142 of the Constitution of India vest in the Supreme Court, the power to persuade, and if necessary, compel obedience and observance of judicial orders. This has been the manner of understanding of the power of the Supreme Court. In case there has been any ambiguity, let it now be understood, that the Supreme Court has the unlimited power (in fact, the sacred obligation) to compel obedience and observance of its orders."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 21

"The Supreme Court has the jurisdiction and power to punish for its contempt. It is this dispensation which authorises the Supreme Court to enforce compliance of its orders. For, the power to punish would serve no purpose if the power to enforce compliance was lacking. Hence, the Supreme Court may pass an order of detention to ensure compliance."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 19

"There is no escape from acceptance, or obedience, or compliance with an order passed by the Supreme Court, which is the final and the highest Court in the country. Non-compliance with its orders would dislodge the cornerstone maintaining the equilibrium and equanimity in the country's governance. There would be a breakdown of constitutional functioning. It would be a mayhem of sorts."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 17

" "Truth must triumph" is the hallmark of justice."

— Chandramauli Kr. Prasad, J. in *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576 : (2014) 2 SCC (Civ) 145, para 19

"What a Judge is taught during his arduous and onerous journey to the Supreme Court is, that his calling is based on the faith and confidence reposed in him to serve his country, its institutions and citizens. Each one of the above (the country, its institutions and citizens), needs to be preserved. Each of them grows to prosper, with the others' support. Each of them has duties, obligations and responsibilities and also rights, benefits and advantages. Their harmonious glory

emerges from what is commonly understood as "the Rule of Law". The judiciary as an institution has extremely sacrosanct duties, obligations and responsibilities."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 15

"What is sought to be redressed is a habituation to press illegitimate claims. This practice and pattern is so rampant that in most cases disputes which ought to have been settled in no time at all before the first court of incidence are prolonged endlessly for years and years and from court to court up to the highest Court. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate he must pay for the same. In the present setting of the adjudicatory process a litigant no matter how irresponsible he is, suffers no consequences. Every litigant, therefore, likes to take a chance even when counsel's advice is otherwise."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, paras 192 and 193

"When the litigating party understands that it would have to compensate the party which succeeds, unnecessary litigation will be substantially reduced. At the end of the day, Court time lost is a direct loss to the nation. It is about time that the legislature should evolve ways and means to curtail this unmindful activity. The Court is sure that an eventual determination one way or the other would be in the best interest of this country, as also, its countrymen."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 194

"While exercising the power of judicial review, Courts also pass orders and directions to enforce legal rights. Courts are rarely confronted with a situation where an executive department of a government, or an instrumentality/institution, has denied compliance."

— J.S. Khehar, J. in *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470 : (2014) 4 SCC (Civ) 424 : (2014) 3 SCC (Cri) 712, para 16.4

"While it is correct that the dimensions and perspectives of the meaning and content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a fundamental right, in our considered view, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country."

— Ranjan Gogoi, J. in *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1 : (2014) 2 SCC (Civ) 417, para 16

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— Entry in accounts — When can amount to admission *See* CIVIL PROCEDURE CODE, 1908, Or. 12 R. 6 and Or. 7 R. 2, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376

— General ledger entries — Evidentiary value — General ledger entries as proof of authenticity of cash transactions mentioned therein — Held, general ledger entries cannot be the basis for accepting that cash transactions mentioned therein are correct unless there is authentic supporting material *See* EVIDENCE ACT, 1872, S. 34, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

ACCRUAL OF CONTRACTUAL OBLIGATION

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights'

ACQUIESCENCE

See ESTOPPEL, ACQUIESCENCE AND WAIVER

ACQUISITION OF PROPERTY

See PROPERTY LAW

ACQUISITION, REQUISITION AND NATIONALISATION

1. GENERALLY

See CONSTITUTION OF INDIA, Art. 300-A, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161

2. BURMAH SHELL (ACQUISITION OF UNDERTAKINGS IN INDIA) ACT, 1976

[1] — S. 5(2) — Renewal of lease in terms of statutory renewal provision contained in S. 5(2), held, is only possible once — Statutory renewal provision may not be resorted to repeatedly — Effect of existence of renewal clause in lease — Supersession thereof by the statutory renewal provision — *Held, the same does not entitle lessee to enjoy benefit of renewal once under the contractual renewal provision contained in the lease, and then a second time under the statutory renewal provision — Contention of lessee to this effect, categorically rejected — Statutory renewal provision under S. 5(2) further held, superseded the renewal clause contained in the lease, and lessee could invoke said statutory renewal provision only once, which it had done, and no further renewal was possible — Transfer of Property Act, 1882, Ss. 105, 107, 106 and 116. Bharat Petroleum Corpn. Ltd.* v. *Rama Chandrashekhar Vaidya*, (2014) 1 SCC 657: (2014) 1 SCC (Civ) 635: (2013) 2 CTC 881: (2014) 4 Mah LJ 69: (2014) 3 MPLJ 39: (2013) 3 LW 296.

Bench Strength **2**. Coram: **Aftab Alam** and *Ranjana P. Desai*, JJ. [Date of decision: 2-4-2013]

State of U.P. v. Lalji Tandon, (2004) 1 SCC 1; Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394; Hardesh Ores (P) Ltd. v. Hede and Co., (2007) 5 SCC 614, applied

Hindustan Petroleum Corpn. Ltd. v. Dolly Das, (1999) 4 SCC 450, explained and distinguished

Bharat Petroleum Corpn. Ltd. v. Rama Chandrashekhar Vaidya, Civil Revision Application No. 535 of 2009, order dated 14-10-2009 (Bom), affirmed

Bharat Petroleum Corpn. Ltd. v. P. Kesavan, (2004) 9 SCC 772, distinguished on facts

3. GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

— S. 16 *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 2(e) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

See also PROPERTY LAW — 'Ownership and Title', (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

4. GENERAL INSURANCE (EMERGENCY PROVISIONS) ACT, 1971

See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 2(e) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— Ss. 2(e), 2(g), 4 and 5, (2014) 4 SCC 657

See also PROPERTY LAW — 'Ownership and Title', (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

5. TRANSFER OF PROPERTY BY OPERATION OF LAW

— "Belonging to" — Meaning of — Taking over of ownership and not merely management — Necessity of *See* PROPERTY LAW — 'Ownership and Title', (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

ACTION/CAUSE OF ACTION

See PRACTICE AND PROCEDURE

ACTUS CURIAE NEMINEM GRAVABIT

See DOCTRINES AND MAXIMS

ADDITIONAL EVIDENCE

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ADDITIONAL PLEA/PLEADINGS/NEW PLEA/ ALTERNATIVE PLEA

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ADMINISTRATIVE ACTION

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ADMINISTRATIVE LAW

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1. ADMINISTRATIVE ACTION

(a) Administrative or Executive Function

(1) Generally — Nature and Scope

See PRACTICE AND PROCEDURE — 'State as a litigant/party', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(2) Administrative Orders/Decisions/Executive Instructions/Orders/Circulars

See also TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Ss. 45 and 116, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

[2] — Guidelines — Guidelines issued by Government to prevent arbitrary use of powers under the Public Premises Act, 1971 — Value and effect of — Held, are advisory in character and do not confer any rights on occupants of public premises — *But intention behind the Guidelines cannot be ignored by public undertakings which are expected to follow them — Guidelines can be used for limited purpose of throwing light on the intention behind the statute — Resolution No. 21013/1/2000-Pol. 1, dt. 30-5-2002, published in the Gazette of India, Pt. I,*

1.(a)(2) Administrative Orders/Decisions/Executive Instructions/Orders/Circulars *(contd.)*

S. 1 dt. 8-6-2002 — Public Premises (Eviction of Unauthorised Occupants) Act, 1971, Ss. 3-A to 8 (Paras 56 to 58). *Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

[3] — Guidelines — Primacy of statutory framework — *Held, guidelines/executive instructions not statutory in character, are not law — They confer no legal right to seek a direction in a court of law for compliance with such guidelines even if there has been any violation or breach of such non-statutory guidelines — An order validly made in accordance with a statute cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or mala fide or in violation of any statutory provision* (Para 6). *Syndicate Bank* v. *Ramachandran Pillai*, (2011) 15 SCC 398: (2014) 2 SCC (Civ) 596.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-1-2011]

— Inapplicability of S. 6, General Clauses Act, 1897 *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

[4] — Primacy of law/rules — Executive instructions — Cannot substitute law/rules — However such instructions can cover situation where rules are silent — *Constitution of India, Arts. 300-A, 265 and 13 — Words and Phrases — "Law"*

A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced. (Para 16)

Though the administration can issue administrative instructions for the smooth administrative function, such administrative instructions cannot supplant the rules. However, these administrative instructions can supplement the statutory rules by taking care of those situations where the statutory rules are silent. (Para 7)

It hardly needs to be emphasised that executive instructions do not have statutory character and, therefore, cannot be termed as "law" within the meaning of the Article 300-A of Constitution of India. On the basis of such a circular, which does not have the force of law, the appellant State Government cannot withhold even a part of pension or gratuity. As it was noticed, so far as statutory Rules were concerned, there was no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different. Hence appeals were dismissed with costs of Rs 10,000 each. (Paras 17 and 18). *State of Jharkhand* v. *Jitendra Kumar Srivastava*, (2013) 12 SCC 210: (2014) 2 SCC (L&S) 570: (2014) 1 SCC (Civ) 315: AIR 2013 SC 3383: (2013) 3 KLT 782: (2013) 129 AIC 44: (2014) 117 Cut LT 945.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **A.K. Sikri**, JJ. [Date of decision: 14-8-2013]

Jitendra Kumar Srivastava v. State of Jharkhand, LPA No. 678 of 2005, order dated 31-10-2007 (Jhar), affirmed

Dudh Nath Pandey v. State of Jharkhand, (2007) 2 BLJR 2847: (2007) 4 JCR 1, approved

Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910: (1968) 1 SCR 111, distinguished

— Source of statutory power — Legislation by incorporation or reference *See* STATUTE LAW — 'Legislation by Incorporation or by Reference', (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

— Withdrawal of notification taking away benefit — Survival of benefit, thereafter not contemplated *See* ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Cinemas, Videos and Cable Television' — Delhi Cinematograph Rules, 1953, Rr. 10, 24, 37 and Sch. I, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(3) Application/Non-Application of Mind

— Application of mind *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', Preamble and Statement of Objects and Reasons and S. 8, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

(4) Exercise of Power/Discretionary Power

See TRUSTS AND TRUSTEES — 'Rajasthan Public Trusts Act, 1959 (42 of 1959)', S. 53 (w.e.f. 1-7-1962), (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199

(5) Fairness in action

See 'Natural Justice' — Duty to give reasons/Recording of reasons/Speaking order, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671

(6) Implementation of Court orders/Compliance with judicial precedents

See CONSTITUTION OF INDIA, Arts. 32, 226, 136, 129, 144 and Arts. 73, 74, 162 and 163, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 131 and 144, (2014) 8 SCC 470

(7) Public Interest/Public Purpose/Public Trust Doctrine

See (2012) 13 SCC 61

(8) State as a Litigant/Party

See CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

See also PRACTICE AND PROCEDURE — 'State as a litigant/party', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Costs personally recoverable from Officers Concerned — Held, costs should be real and compensatory and not merely symbolic — Exemplary costs can be awarded where appeal is devoid of merit *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Costs personally recoverable from Officers Concerned — When warranted *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Frivolous litigation — Expenses to be paid personally by official(s) concerned *See* CIVIL PROCEDURE CODE, 1908, Ss. 100 and 102, (2014) 3 SCC 156: (2014) 2 SCC (Civ) 265

(b) Judicial Function

— Generally — Duty to give "findings", held, implies duty to give reasons *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— Generally — Fundamental policy of Indian law — Fundamental juristic principles (non-exhaustive) applicable to every determination by a court or any authority, enunciated *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

(c) Quasi-Judicial Function

(1) Distinction between a Quasi-Judicial Body and a Court

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 28-A and 18, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

(2) Exercise of Quasi-Judicial Power

— Duty to give "findings", held, implies duty to give reasons *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— Fundamental policy of Indian law — Fundamental juristic principles (non-exhaustive) applicable to every determination by a court or any authority, enunciated *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

(3) Jurisdiction

See REORGANISATION AND ADMINISTRATION OF STATES, UTs & OTHER AREAS — 'U.P. Reorganisation Act, 2000 (29 of 2000)', S. 91, (2011) 15 SCC 127: (2014) 2 SCC (Civ) 347

(4) Limitation

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 28-A and 18, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

See also LIMITATION — 'Limitation Act, 1963', S. 5, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

2. ADMINISTRATIVE AND REGULATORY BODIES

[5] — Administrative/Statutory Authorities — Powers and Jurisdiction — Body created by statute must conform to provisions of regulating statute (Para 15). *Vinodkumar M. Malavia* v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength **2**. Coram: *S.S. Nijjar* and **P.C. Ghose, JJ.** [Date of decision: 30-9-2013]

3. DELEGATION OF POWER

— Delegation of Administrative Power — Extent permissible *See* LAND ACQUISITION AND REQUISITION — 'Chandigarh (Delegation of Powers) Act, 1987', S. 3(1), (2013) 11 SCC 228: (2014) 1 SCC (Civ) 32

4. JUDICIAL REVIEW

(a) Exclusion of Judicial Review

— Policy/Policy decision/Policy matter — PDS — Judicial review of State Government decision regarding authority who should be given charge of PDS considering various ground realities and circumstances — Impermissibility *See* ESSENTIAL COMMODITIES AND SERVICES — 'Essential Commodities Act, 1955', Ss. 5 and 3, (2013) 11 SCC 783: (2014) 1 SCC (Civ) 607

(b) Grounds for Judicial Review

Arbitrary exercise of Discretionary Power

See 'Natural Justice' — Duty to give reasons/Recording of reasons/Speaking order, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671

5. NATURAL JUSTICE

(a) Generally — Nature, Scope and Applicability

— Compliance with principles of natural justice required though compliance with CPC not required — Testing validity of procedure followed by tribunal — Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Tribunals, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(b) Audi Alteram Partem — Right to Hearing

(1) Generally — Meaning, Nature, Scope and Applicability

— Applicability of principles of natural justice — Determination of — If a statutory provision could be read consistently with the principles of natural justice, the courts would prefer do so — That is because it can be presumed that the legislature and the statutory

5.(b)(1) Generally — Meaning, Nature, Scope and Applicability *(contd.)*

authorities intend to act in accordance with such principles — In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 48, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

[6] — Penal orders, held, cannot be passed without giving any notice and hearing to the affected person — *Hence, demand for 50% of unearned income for violation of terms and conditions of allotment order passed without giving such notice and hearing to appellant, were passed in violation of the rules of natural justice* (Paras 38 and 39). *Voltas Ltd.* v. *Tahsildar, Thane*, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49: (2012) 95 ALR 871: (2012) 120 AIC 44.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 8-11-2012]

(2) Notice/Show-Cause

See also ADMINISTRATIVE LAW — '10.(c)(11) Notice/Show-Cause', pp. 282 et seq. in **Vol. 1**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

See GOVERNMENT CONTRACTS/TENDERS — 'Cancellation/Termination', (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

(3) Proper or Fair Hearing

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A and 6(1), (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

— Ss. 5-A(1) & (2), 4 and 6, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588

— Matter heard by one officer — But order passed by his successor without giving a fresh hearing — Effect — Whether principles of natural justice violated in such a case *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 5-A, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

(4) Remedy/Relief on Denial of Hearing

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A, 4 and 16, (2014) 3 SCC 203: (2014) 2 SCC (Civ) 267

(c) Bias/Nemo Debet Esse Judex in Propria Sua Causa

(1) Generally — Meaning, Nature, Applicability and Scope

— Allegation of bias — When maintainable — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[7] — Inapplicability — Recruitment process for public employment — Disclosure of names/addresses of interviewers — *Held, element of bias cannot be related with disclosure of names and addresses of interviewers — Bias is not a ground which can be considered for or against party making application to which exemption under S. 8 of RTI Act, 2005 is pleaded as a defence — View of High Court that element of bias could be traced and crystallised only if names of interviewers are furnished, held, erroneous — Right to Information Act, 2005, S. 8*

The Bihar PSC published an advertisement for filling up the posts of "State Examiner of Questioned Documents", in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement, inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the State Public Service Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of viva voce test alone. The State Public Service Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

Respondent 1 claiming to be a public spirited citizen filed an application before the Commission under the RTI Act, 2005, seeking information in relation to eight queries which pertained to the interview which was held on 30-9-2002 and 1-10-2002 by the State Public Service Commission. These queries, inter alia, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to MSc during the selection process with the signatures of the members/officers and certified copy of the merit list. The State Public Service Commission furnished the information nearly to all the queries of Respondent 1 except the name, designation and addresses of the members of the Interview Board in accordance with the provisions of Section 8(1)(*g*) of the RTI Act.

Respondent 1 challenged the order of the Information Commission by filing a writ petition. The petition was dismissed by the Single Judge of the High Court. The Division Bench allowed the appeal filed thereagainst finding that Section

8(1)(*g*) of the 2005 Act was inapplicable to the instant case inasmuch as it had application in respect of law enforcement agency and for security reasons. Since no such consideration arose with respect to the affairs of the State Public Service Commission and its function was in public domain, reliance on the said provision for denying the information sought for was held not tenable in law. Hence, the instant appeal by the State Public Service Commission.

Allowing the appeal,

Held :

The view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallised only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under Query No. 1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required to be disclosed but disclosure of individual names of the interviewers would hardly hold relevancy either to the concept of transparency or for proper exercise of right to information within limitations of the RTI Act. (Para 29). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2**. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2010 Pat 57, affirmed

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2011 Pat 103, reversed

(2) Pleadings or Allegation of Bias

— When maintainable — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(3) Real Likelihood of Bias/Reasonable apprehension of bias

— Possibility of — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(d) Duty to give reasons/Recording of reasons/Speaking order

— Effect of not recording reasons *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A, 4 and 16, (2014) 3 SCC 203: (2014) 2 SCC (Civ) 267

[8] — Held, though hearing against modification or annulment of resolution of State Improvement Trust by State Government or Deputy Commissioner is not postulated, rules of fairness require that it must give some indication of application of mind by recording reasons — *In instant case, Government while modifying resolution of Trust, did not consider pros and cons of the resolution — Held, High Court should have quashed order passed under S. 72-E of the 1922 Act and directed State Government to decide matter afresh — Its failure to adopt that course resulted in manifest injustice and adversely affected the appellants — Decision taken by Secretary was wholly arbitrary, unreasonable and unjustified — Hence, High Court committed grave error by refusing to quash the same — Punjab Town Improvement Act, 1922 (4 of 1922), S. 72-E. Sham Lal* v. *State of Punjab*, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671.

Bench Strength **2**. Coram: **G.S. Singhvi** and *Gyan Sudha Misra*, JJ. [Date of decision: 6-8-2013]

Arun Kumar v. State of Punjab, (2011) 2 ICC 235 (P&H), reversed

— Necessity — "Findings" — What includes *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

(e) Mala Fides/Colourable exercise of Power

See also ADMINISTRATIVE LAW — '10.(h) Mala Fides/Colourable exercise of Power', pp. 334 et seq. in **Vol. 1**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

Burden of Proof/Proof of/Persons to be impleaded

[9] — Allegations of malice in fact — Duty of court — Allegations suggesting "malice in fact" to be specific and supported by necessary particulars — Vague and general averments that action under review was taken mala fide would not suffice — *Burden to establish action was mala fide rests heavily upon the person making the charge — Presumption that a public authority acted bona fide and in good faith — Such presumption can be rebutted by person making charge of mala fides but only on cogent and satisfactory*

5.(e)(1) Burden of Proof/Proof of/Persons to be impleaded *(contd.)*

proof, direct or circumstantial, that the action lacked bona fides, and therefore was vitiated — Lastly, person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him — CPC, 1908, Or. 6 R. 4

The High Court has held the action of the Minister to be actuated by mala fides. Inasmuch as the Minister passed an order without affording a fair hearing to APMC, the beneficiary of the acquisition and on grounds that were untenable, the Minister did so under the influence of the builder observed the High Court. The law regarding pleading and proof of "malice in fact" or mala fides as it is in common parlance described is indeed settled. The requirement is that allegations suggesting "malice in fact" to be specific and supported by necessary particulars. Vague and general averments to the effect that the action under review was taken mala fide would not therefore suffice. The burden to establish that the action under challenge was indeed mala fide rests heavily upon the person making the charge; which is taken as quasi-criminal in nature and can lead to adverse consequence for the person who is proved to have acted mala fide. There is in fact a presumption that the public authority acted bona fide and in good faith. That presumption can no doubt be rebutted by the person making the change but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bona fides and was for that reason vitiated. The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him. (Paras 40 and 42)

The charge of mala fides levelled against the appellant, the then Minister was not supported by any particulars. The writ petition filed by APMC did not provide specific particulars or details of how the decision taken by the Minister was influenced by the developer or by any other person for that matter. Such allegations were insufficient to hold the charge of "malice in fact" levelled against the Minister proved. It is trite that every action taken by a public authority even found untenable cannot be dubbed as mala fide simply because it has fallen short of the legal standards and requirements for an action may continue to be bona fide and in good faith no matter the public authority passing the order has committed mistakes or irregularities in procedures or even breached the minimal requirements of the principles of natural justice. The High Court has attributed to the Minister mala fides simply because the order passed by him was found to be untenable in law. Such an inference was not justified, no matter the circumstances enumerated by the High Court may have given rise to a strong suspicion that the Minister acted out of extraneous considerations. Suspicion, however strong cannot be proof of the charge of mala fides. It is only on clear proof of high degree that the court could strike down an action on the ground of mala fide which standard of proof was not satisfied in the instant case. To the extent the High Court held the action of the Minister to be mala fide, the impugned order would require correction. (Paras 48 to 51). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

[10] — Malice in Law and Malice in Fact — Inference of malice in law — Every action taken by a public authority even found untenable cannot be dubbed as mala fide simply because it has fallen short of the legal standards and requirements — *An action may continue to be bona fide and in good faith no matter that the public authority passing the order has committed mistakes or irregularities in procedures or even breached minimal requirements of the principles of natural justice*

The High Court has held the action of the Minister to be actuated by mala fides. Inasmuch as the Minister passed an order without affording a fair hearing to APMC, the beneficiary of the acquisition and on grounds that were untenable, the Minister did so under the influence of the builder observed the High Court. The law regarding pleading and proof of "malice in fact" or mala fides as it is in common parlance described is indeed settled. The requirement is that allegations suggesting "malice in fact" to be specific and supported by necessary particulars. Vague and general averments to the effect that the action under review was taken mala fide would not therefore suffice. The burden to establish that the action under challenge was indeed mala fide rests heavily upon the person making the charge; which is taken as quasi-criminal in nature and can lead to adverse consequence for the person who is proved to have acted mala fide. There is in fact a presumption that the public authority acted bona fide and in good faith. That presumption can no doubt be rebutted by the person making the change but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bona fides and was for that reason vitiated.

The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him. (Paras 40 and 42)

The charge of mala fides levelled against the appellant, the then Minister was not supported by any particulars. The writ petition filed by APMC did not provide specific particulars or details of how the decision taken by the Minister was influenced by the developer or by any other person for that matter. Such allegations were insufficient to hold the charge of "malice in fact" levelled against the Minister proved. It is trite that every action taken by a public authority even found untenable cannot be dubbed as mala fide simply because it has fallen short of the legal standards and requirements for an action may continue to be bona fide and in good faith no matter the public authority passing the order has committed mistakes or irregularities in procedures or even breached the minimal requirements of the principles of natural justice. The High Court has attributed to the Minister mala fides simply because the order passed by him was found to be untenable in law. Such an inference was not justified, no matter the circumstances enumerated by the High Court may have given rise to a strong suspicion that the Minister acted out of extraneous considerations. Suspicion, however strong cannot be proof of the charge of mala fides. It is only on clear proof of high degree that the court could strike down an action on the ground of mala fide which standard of proof was not satisfied in the instant case. To the extent the High Court held the action of the Minister to be mala fide, the impugned order would require correction. (Paras 48 to 51). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

(f) Particular instances of natural justice

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A and 17(4), (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

— Land acquisition *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

— Ss. 5-A(1) & (2), 4 and 6, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

— Land acquisition — Withdrawal from acquisition *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 48, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

(g) Pleading and Proof

See CIVIL PROCEDURE CODE, 1908, Or. 6 Rr. 2 and 4 and Or. 8 Rr. 3 to 5, (2014) 4 SCC 693: (2014) 2 SCC (Civ) 721

6. PROMISSORY ESTOPPEL

[11] — Plea of, against Government, when must be raised — *Compromise arrived at before court between appellant and R-2, Chief Manager of State Industries Development Corporation, whereby R-2 agreed to reconvey a portion of land to appellant, whose land was acquired by Government and to construct an office building on remaining portion — But instead of constructing building, Government allotted portion which was to be reconveyed to appellant, to a private firm — However, realising its mistake, Government took steps to withdraw allotment before filing of suit by appellant for specific performance of compromise and reconveyance of remaining parcel of land — High Court declined to grant decree for specific performance to appellant and to grant compensation claimed by allottee firm for some developments made on allotted land — Held, allottee firm's claim for compensation was unwarranted as such claim could have been made on basis of promissory estoppel against Government but such plea had not been made — CPC, 1908, Or. 23 R. 3 and S. 80* (Para 12). *Tarabai* v. *State of Karnataka*, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665: AIR 2013 SC 2881: (2014) 3 Mah LJ 236: (2014) 2 MPLJ 323.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Ranjana P. Desai*, JJ. [Date of decision: 3-9-2013]

Basanth Tiles v. Parashuram, (2006) 6 Kant LJ 75: 2006 AIHC 195, affirmed

7. SUBORDINATE/DELEGATED LEGISLATION

(a) Generally

— Concept, Nature and Scope — Matters which may be "prescribed" — Means prescribed by rules *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Ss. 45 and 116, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

(b) Interpretation of Subordinate/Delegated Legislation

(1) Subsidiary rules

(i) Conjunctive or disjunctive

— "Or" when conjunctive *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

(ii) Ejusdem generis

— Rule of applied *See* COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court Rules, 1966, Or. 4 R. 8-A, (2014) 1 SCC 572: (2014) 1 SCC (Civ) 483

(c) Primacy of parent statute/primary statutes

— Parent statute — Legislation by incorporation or reference *See* STATUTE LAW — 'Legislation by Incorporation or by Reference', (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

(d) Primacy over Administrative orders/Decisions/Executive Instructions/Orders/Circulars

See 'Administrative Action' — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars, (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

(e) Repeal/Supersession

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4 and 6 [as amended by Act of 1984], (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

— Ss. 4, 6 and 18, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

8. ULTRA VIRES

(a) Grounds for Plea of Ultra Vires

(1) Non-compliance with Statutory Provisions

See REORGANISATION AND ADMINISTRATION OF STATES, UTs & OTHER AREAS — 'U.P. Reorganisation Act, 2000 (29 of 2000)', S. 91, (2011) 15 SCC 127: (2014) 2 SCC (Civ) 347

(2) Power to be exercised by a Specified Authority

See STATUTE LAW — 'Legislation by Incorporation or by Reference', (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

ADMINISTRATIVE OR EXECUTIVE FUNCTION

See ADMINISTRATIVE LAW — 'Administrative Action'

ADMINISTRATIVE ORDERS/DECISIONS/EXECUTIVE INSTRUCTIONS/ORDERS/CIRCULARS

See ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function

ADMISSION

See CIVIL SUIT

See also PRACTICE AND PROCEDURE

ADOPTION

See FAMILY AND PERSONAL LAWS

See also FAMILY AND PERSONAL LAWS — 'Muslim Law'

ADVERSE POSSESSION

See PROPERTY LAW

See also RENT CONTROL AND EVICTION

ADVERSE/DISPARAGING REMARKS/OBSERVATIONS/STRICTURES

See PRACTICE AND PROCEDURE

ADVOCATE-ON-RECORD (AoR)

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ADVOCATES

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6. **Professional Standards, Ethics and Duties of Advocates** 12

1. GENERALLY

See also EVIDENCE ACT, 1872, Ss. 59 to 62 and 155, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[12] — Professional standards, duties and ethics of advocates — Lawyers and Judges are equal partners in the administration of justice — Duties and standards expected of advocates as an officer of the court and towards their clients/litigants (Para 10). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

— Role of the bar, administration and public institutions/officers — Availability of justice to all — Necessity of transparency and accountability in functioning of both the Bench and Bar — Conversion of legal profession, a noble profession, into a commercial undertaking, in the present day lamented *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Role of the Bar, Administration and Public Institutions/Officers, (2014) 1 SCC 572: (2014) 1 SCC (Civ) 483

2. ADVOCATE-ON-RECORD (AoR)

[13] — Degradation of institution of AsOR — Strongly deprecated (Paras 13 and 21 to 24). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

[14] — Misconduct or conduct unbecoming of an AOR — AOR merely lending his signature facilitating filing of petitions but taking no responsibility for the matter nor appearing in Court — Suo motu contempt action initiated for removal of his name from register of AsOR — Unconditional apology tendered — *Appeal and application for restoration of the appeal both dismissed in default on non-appearance of AOR and his refusal to come to the Court on being called — Show-cause notice issued for removal of name from register of AsOR — AOR tendering an absolute and unconditional apology furnishing undertaking to that effect — Some Senior Advocates and members of the Bar also requesting Supreme Court to pardon said AOR — Held, prima facie, conduct of said AOR tantamounts to interfering with administration of justice — Although said AOR's conduct is reprehensible and not worth pardoning, however, considering the fact and circumstances, his conduct is censured and he is warned not to behave in such manner in future and to appear in Court in all the cases wherever he has entered appearance — AOR for the time being given one year's time to reform his conduct and if no improvement is found, proceedings may be initiated against him again* (Paras 13 and 17 to 26). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

3. ADVOCATES ACT, 1961

— **Ss. 16 and 36** *See* 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[15] — S. 32 — Discretion of court to allow non-advocates to argue in person — Held, natural persons can be permitted to argue their own case even if he is not an advocate — But non-advocates cannot be allowed to represent an artificial person like company or cooperative society or trust as in present case — *Therefore, discretion under S. 32 was not allowed to the Manager to represent its company in court — However, leave was granted to the petitioner to engage a lawyer within four weeks' time to appear and argue on behalf of the company — CPC, 1908, Or. 3* (Paras 5 to 8). *Goa Antibiotics and Pharmaceuticals Ltd.* v. *R.K. Chawla*, (2011) 15 SCC 449: (2014) 2 SCC (Civ) 617: (2011) 3 KLT 498.

Bench Strength 2. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 4-7-2011]

— **S. 35** *See also* EVIDENCE ACT, 1872, Ss. 137, 146 and 138, (2013) 11 SCC 435: (2014) 1 SCC (Civ) 568

[16] — Ss. 35, 36 and 38 — Professional misconduct — Advocate filing vakalatnamas without authority and later on filing fictitious compromises — Punishment — Nature and objectives of — Legal profession being a noble profession, held, award of punishment for professional misconduct is a delicate and sensitive exercise — *It has twin objectives of deterrence and correction — Held, leniency in punishment where respondent advocate found guilty of grave and serious professional misconduct would amount to compromise with purity and dignity of legal profession which in turn affect faith and respect of people in rule of law — In the circumstances of case, respondent advocate is suspended from practise for a period of three years* (Paras 13 and 15 to 20)

The respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises. The professional misconduct committed by the respondent is extremely grave and serious. He has indulged in mischief-making. An advocate found guilty of having filed vakalatnamas without authority and then filing fictitious compromises without any authority deserves punishment commensurate with the degree of misconduct that meets the twin objectives-deterrence and correction. Fraudulent conduct of a lawyer cannot be viewed leniently lest the interest of the administration of justice and the highest traditions of the Bar may become casualty. By showing undue sympathy and leniency in a matter such as this where the advocate has been found guilty of grave and serious professional misconduct, the purity and dignity of the legal profession will be compromised. Any compromise with the purity, dignity and nobility of the legal profession is surely bound to affect the faith and respect of the people in the rule of law. Moreover, the respondent advocate had been previously found to be involved in a professional misconduct and he was reprimanded. Having regard to all these aspects, it would be just and proper if the respondent advocate is suspended from practise for a period of three years from the date of this judgment. (Para 20). *Narain Pandey* v. *Pannalal Pandey*, (2013) 11 SCC 435: (2014) 1 SCC (Civ) 568: AIR 2014 SC 944: (2013) 1 CTC 104: (2013) 116 Cut LT 27: (2013) 96 ALR 275: (2013) 121 AIC 12: (2013) 1 LW 668.

Bench Strength 2. Coram: **R.M. Lodha** and *Anil R. Dave*, JJ. [Date of decision: 10-12-2012]

'The Practice of Law is a Public Utility' — 'The Lawyer, The Public and Professional Responsibility' by F. Raymond Marks et al — Chicago American Bar Foundation, 1972, pp. 288-89, cited

4. CONCESSION BY COUNSEL

See CIVIL PROCEDURE CODE, 1908, S. 114 and Or. 3 Rr. 1 & 4, (2011) 15 SCC 229: (2014) 2 SCC (Civ) 361

5. NOTARIES ACT, 1952

— **S. 8** *See also* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[17] — S. 8 — Non-issuance of notarial certificate under — Effect — *Held, will make the notarisation of alleged document suspicious — Even the statement of notary as to execution of document in absence of such certificate will be liable to be rejected — Evidence Act, 1872, Ss. 64, 68, 72 and 144. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength 2. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

6. PROFESSIONAL STANDARDS, ETHICS AND DUTIES OF ADVOCATES

See 'Advocates Act, 1961', Ss. 35, 36 and 38, (2013) 11 SCC 435: (2014) 1 SCC (Civ) 568

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[18] — Counsel besides being representative of a party is also an officer of court and owes a duty to the system to act with utmost dignity, respect and morality — Advocates owe a dual duty, firstly to the court i.e. the justice delivery system and secondly, to society at large — Public reposes great confidence in judicial system of which lawyers are an indispensable part — *On facts held, advocate contemnor had thrown off wings of dignity, values and expectations of all concerned by using filthy and abusive language in court which is nothing but a definite act of criminal contempt — Moreover, he was also involved in some criminal cases and was in and out of jail — State Bar Council and the Bar Council of India directed to examine whether such person should be on rolls of the noble profession and enjoy benefits, privileges and freedom available to the profession — Sentence of four months' simple imprisonment with fine of Rs 2000 with default sentence of two weeks', affirmed — CJM, Mainpuri, U.P. directed that if appellant contemnor did not surrender, non-bailable arrest warrants to be issued to insure he undergoes remaining sentence* (Paras 8 to 10). *Chandra Prakash Singh Chauhan* v. *State of U.P.*, (2011) 15 SCC 235: (2014) 4 SCC (Cri) 584: (2014) 2 SCC (Civ) 363: 2012 Cri LJ 1502.

Bench Strength 2. Coram: *Dr B.S. Chauhan* and *Swatanter Kumar*, JJ. [Date of decision: 14-6-2011]

— Emerging pressures on judicial system — Hope expressed for support for officers presiding over courts from the legal fraternity, as also, from superior judiciary up to the highest level *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Generally, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[19] — Senior Counsel — Duties of — Duty to make submissions that reflect the true factual position known to them — Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Attempts to overawe the court with psychological offensives and mind games, with ferocity and grandiloquence, without any factual basis — Strongly repulsed and stringently deprecated — *Submissions of Senior Counsel for petitioner that Supreme Court had directed detention of petitioner herein for non-compliance with court orders without any notice or opportunity to explain himself or show cause — Held, the Senior Counsel who represented the petitioner were surely insincere to the cause of justice when they drummed their assertions without blinking an eye: since they were aware that the factual position was otherwise — For the Senior Counsel for the petitioner to advance such submissions, to state the least, was unimaginable — They surely ought to have known better because they had appeared in the contempt proceedings in defence of the contemnors and were aware of all the facts — Advocates Act, 1961, Ss. 16 and 36 — Constitution of India, Art. 32.* (Para 185.1). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength 2. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

ADVOCATES ACT, 1961

See ADVOCATES

AGENCY

See CONTRACT AND SPECIFIC RELIEF — 'Specific Contracts'

AGREEMENTS/CONTRACTS/GOVERNMENT CONTRACTS
See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Particular deeds, documents and clauses
— 'Particular deeds, documents and clauses'

AGREEMENTS/RESTRAINT CLAUSES
See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights'

AIDS TO CONSTRUCTION
See CONSTITUTIONAL INTERPRETATION

ALIENATION
See PROPERTY LAW
See also TENANCY AND LAND LAWS

ALIENATION OF AFFECTION
See TORT LAW

ALLEGANS SUAM TURPITUDINEM NON EST AUDIENDUS
See DOCTRINES AND MAXIMS

ALLOCATION OF RISK/LIABILITY TO BEAR UNEXPECTED BURDEN
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ALLOCATION OF WORK, ROSTER AND BENCHES
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ALTERNATIVE PLEA/ADDITIONAL PLEA/ PLEADINGS/NEW PLEA
See PRACTICE AND PROCEDURE

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ANDAMAN AND NICOBAR ISLANDS (LAND TENURE) REGULATIONS, 1926
See TENANCY AND LAND LAWS

ANDHRA PRADESH CHARITABLE AND HINDU RELIGIOUS INSTITUTIONS AND ENDOWMENTS ACT, 1987 (30 OF 1987)
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ARBITRATION

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1. APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF INDIA SCHEME, 1996

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2. ARBITRATION ACT, 1940

[20] — Ss. 2(a), 8 and 34 — Arbitration clause — What is — Determination of — Government contracts — Clause empowering Superintending Engineer to immediately resolve any controversy relating to specifications, designs, drawings, quality of workmanship or material used, etc. and providing that his decision shall be binding on contractor, held, is not arbitration clause — *Interpreting Cl. 30 of agreement (B-1 Agreements), held, power conferred upon Superintending Engineer is in the nature of departmental dispute resolution mechanism meant for expeditious sorting out of problems that arise during execution of work — Further, nothing can be inferred from Cl. 30 that parties had conferred role of arbitrator upon Superintending Engineer — Power conferred upon Superintending Engineer to take decision on matters enumerated in Cl. 30 did not involve adjudication of any dispute or lis between Government and contractor — Hence, said clause is not an arbitration clause — Though Para 224 of Maharashtra Public Works Manual, as amended by Government C.M. No. CAT-1070/460-DSK.2, dt. 9-5-1977 states that Cl. 30 of B-1 Agreements are to be treated as arbitration clauses, held, circulars issued by Government are not conclusive of correct interpretation of relevant clauses of agreement — Arbitration and Conciliation Act, 1996, S. 7. Vishnu* v. *State of Maharashtra*, (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455: (2013) 131 AIC 14: (2014) 3 Mah LJ 732: (2014) 3 MPLJ 678: (2013) 101 ALR 210.

Bench Strength 3. Coram: **G.S. Singhvi**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 4-10-2013]

State of U.P. v. Tipper Chand, (1980) 2 SCC 341; State of Maharashtra v. Ranjeet Construction, AIR 1986 Bom 76: 1986 Mah LJ 401; State of Orissa v. Damodar Das, (1996) 2 SCC 216; K.K. Modi v. K.N. Modi, (1998) 3 SCC 573; Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd., (1999) 2 SCC 166, applied

State of Maharashtra v. Vishnu Vasudeo Narsikar, Civil Revision Application No. 447 of 1997, decided on 6-5-2004 (Bom), affirmed

Mallikarjun v. Gulbarga University, (2004) 1 SCC 372; Punjab State v. Dina Nath, (2007) 5 SCC 28, distinguished

***Followed in** P. Dasaratharama Reddy Complex v. Government of Karnataka, (2014) 2 SCC 201 at pp. 219-21*

[21] — Ss. 16(1)(c), 30(c) and 17 — Remand of disputes to arbitrator to decide afresh — Direc-

tion to arbitrator to proceed under new Act, when arbitral proceedings were conducted under 1940 Act — Untenability — *Held, when arbitration proceedings are conducted under 1940 Act, any remission by court to arbitrator can only be under said provisions only — Arbitration and Conciliation Act, 1996, S. 34* (Para 18). *Anand Bros. (P) Ltd.* v. *Union of India*, (2014) 9 SCC 212: (2014) 2 SCC (L&S) 761: (2014) 5 SCC (Cri) 5: (2014) 4 SCC (Civ) 777: AIR 2015 SC 125: (2014) 107 ALR 903: (2014) 143 AIC 229.

Bench Strength 3. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

[22] — Ss. 16(1)(c), 30(c), 17 & 2(b) — Non-speaking award — Permissibility of — Requirement of reasons if mandated by the contract when the word "findings" appeared in arbitration clause i.e. Cl. 70 of general conditions of contract — Textual meaning and contextual significance of word "findings" — Interchangeable use of "finding", "conclusion" and "decision" by legal profession and courts — Significance of — "Findings", whether must include reasons for ultimate conclusion arrived at by arbitrator — Impact of subsequent legislation on same subject and judicial interpretations that make recording of reasons mandatory — *Held, "finding" presupposes application of mind which is best disclosed by recording of reasons — Recording of reasons is the soul of every adjudicatory process which affects rights of parties — Cl. 70 which provides a mechanism for adjudication of disputes between the parties not only requires arbitrator to indicate awarded amount in regard to each item of the claim but also "findings on each one of such items" — Such provision in arbitration clause is made to ensure that arbitrator, while adjudicating upon disputes as a judge, gives reasons for conclusions that he may arrive at — Cl. 70 is not a mere formality for indicating whether the claim is accepted or rejected — Expression "finding" appearing in Cl. 70, therefore, is to be construed to include within it not only the ultimate conclusion which arbitrator arrives at but also the process of reasoning by which he does so — Thus a non-speaking award is not permissible in such circumstances — Arbitration and Conciliation Act, 1996, S. 31(3)*

Dismissing the appeal,

Held :

A plain reading of Clause 70 of general conditions of contract shows that the arbitrator was required to (*i*) give his award within the stipulated period as extended from time to time; (*ii*) the award must be on "all matters referred to him"; (*iii*) the award must indicate the findings of the arbitrator along with sums, if any, awarded; (*iv*) the findings and award of sums if any must be separate on each item of dispute. There is no gainsaying that Clause 70 makes a clear distinction between findings on each individual item of dispute on the one hand and the sum, if any, awarded in regard to the same on the other. That the arbitrator had made his award in regard to each item of dispute raised by the appellant before it, is evident from a reading of the award. The question is whether the arbitrator had recorded his findings on each such items. The High Court has answered that question in the negative and set aside the award holding that the expression "findings" must include the reasons for the ultimate conclusion arrived at by the arbitrator. That view was assailed by the appellant who contended that the expression "findings" should not imply the process of reasoning adopted by the arbitrator for recording his conclusions. A finding howsoever cryptic would, according to the submission of the appellant, satisfy the requirement of Clause 70 for otherwise the clause would have been differently worded so as to make it mandatory for the arbitrator to make what is called a speaking award giving reasons for the conclusions arrived at by him. (Para 5)

The Arbitration and Conciliation Act, 1996 which has repealed the Arbitration Act, 1940 which seeks to achieve the twin objectives of obliging the Arbitral Tribunal to give reasons for its arbitral award and reducing the supervisory role of courts in arbitration proceedings. Section 31(3) of the said Act obliges the Arbitral Tribunal to state the reasons upon which it is based unless the parties have agreed that no reasons be given or the arbitral award is based on consent of the parties. There is, therefore, a paradigm shift in the legal position under the new Act which prescribes a uniform requirement for the arbitrators to give reasons except in the two situations mentioned above. The change in the legal approach towards arbitration as an alternative dispute resolution mechanism is perceptible both in regard to the requirement of giving reasons and the scope of interference by the court with arbitral awards. While in regard to requirement of giving reasons the law has brought in dimensions not found under the old Act, the scope of interference appears to be shrinking in its amplitude, no matter judicial pronouncements at time appear to be heading towards a more expansive approach, that may appear to some to be opening up areas for judicial review on newer grounds falling under the caption

"public policy" appearing in Section 34 of the 1996 Act. These developments are one of the well-known canons for interpretation of statutes that when an earlier enactment is truly ambiguous in that it is equally open to diverse meanings, the later enactment may in certain circumstances serve as the parliamentary exposition of the former. (Paras 7 to 10)

In the above backdrop the textual meaning and contextual significance of the expression "*finding*" appearing in Clause 70 is to be examined. The expression has not been defined either in the agreement executed between the parties or in any statute for that matter. The expression shall, therefore, have to be given its ordinary literal meaning having regard to the context in which the same is used. A textual interpretation that matches the contextual is known to be the best. (Para 11)

It is evident from the English language and law dictionaries and the law lexicons give a wide range of meaning to the expression "*finding*". The predominant use of the expression is in relation to determination by a Judge, jury, administrative agency, arbitrator or a referee. The determination is described either as a "finding", "decision" or "conclusion" upon disputed facts. It is also described as a determination of a fact supported by evidence on the record. It is interchangeably used as a "conclusion" or "decision"; a term used by the legal profession and by courts. The term "conclusion" is in turn defined by *Black's Law Dictionary* as under: "*Conclusion.*—The final part of a speech or writing (such as a jury argument or a pleading); A judgment arrived at by reasoning; an inferential statement; The closing, settling, or final arranging of a treaty, contract, deal, etc." (Para 13)

It is trite that a finding can be both: a finding of fact or a finding of law. It may even be a finding on a mixed question of law and fact. In the case of a finding on a legal issue the arbitrator may on facts that are proved or admitted explore his options and lay bare the process by which he arrives at any such finding. It is only when the conclusion is supported by reasons on which it is based that one can logically describe the process as tantamount to recording a finding. It is immaterial whether the reasons given in support of the conclusion are sound or erroneous. That is because a conclusion supported by reasons would constitute a "finding" no matter the conclusion or the reasons in support of the same may themselves be erroneous on facts or in law. It may then be an erroneous finding but it would nonetheless be a finding. What is important is that a finding presupposes application of mind. Application of mind is best demonstrated by disclosure of the mind; mind in turn is best disclosed by recording reasons. That is the soul of every adjudicatory process which affects the rights of the parties. This is true also in the case of a finding of fact where too the process of reasoning must be disclosed in order that it is accepted as a finding in the sense the expression is used in Clause 70. (Para 14)

The above exposition matches even the contextual interpretation of Clause 70 which provides a mechanism for adjudication of disputes between the parties and not only requires the arbitrator to indicate the amount he is awarding in regard to each item of the claim but also the "findings on each one of such items". The underlying purpose of making such a provision in the arbitration clause governing the parties, obviously was to ensure that the arbitrator while adjudicating upon the disputes as a Judge chosen by the parties gives reasons for the conclusions that he may arrive at. The expression "finding" appearing in Clause 70, therefore, needs to be so construed as to promote that object and include within it not only the ultimate conclusion which the arbitrator arrives at but also the process of reasoning by which he does so. Clause 70 is not meant to be only a wooden or lifeless formality of indicating whether the claim is accepted or rejected. Any such statement would have made no qualitative addition to the adjudication of the claim for the arbitrator would award a sum of money but withhold the reasons for the same. (Para 15). *Anand Bros. (P) Ltd.* v. *Union of India*, (2014) 9 SCC 212: (2014) 2 SCC (L&S) 761: (2014) 5 SCC (Cri) 5: (2014) 4 SCC (Civ) 777: AIR 2015 SC 125: (2014) 107 ALR 903: (2014) 143 AIC 229.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

Raipur Development Authority v. Chokhamal Contractors, (1989) 2 SCC 721, harmonised

RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424; Gora Lal v. Union of India, (2003) 12 SCC 459; Anand Bros. (P) Ltd. v. Union of India, CS (OS) No. 1574 of 1999, order dated 27-2-2002 (Del); Anand Bros. (P) Ltd. v. Union of India, FAO (OS) No. 144 of 2002, order dated 4-8-2008 (Del), affirmed

Black's Law Dictionary, relied on

Daffadar Bhagat Singh and Sons v. ITO, AIR 1969 SC 340; Rajinder Nath v. CIT, (1979) 4 SCC 282, impliedly affirmed

Build India Construction System v. Union of India, (2002) 5 SCC 433, distinguished on facts

— **S. 43** *See* 'Arbitration and Conciliation Act, 1996', S. 27, (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

3. ARBITRATION AND CONCILIATION ACT, 1996

[23] — Pt. I or Pt. II — Foreign-seated arbitration — Proper law of the arbitration agreement/lex arbitri — Determination of —

Application of Pt. I of the 1996 Act to foreign-seated award — Pre-*Balco* agreement — Arbitration clause expressly stipulating juridical seat of arbitration as London and governing law of arbitration agreement as laws of England, while making laws of India as governing law of contract — Effect — Proper law of arbitration agreement, whether laws of India or laws of England — *Applying* Bhatia International, *(2002) 4 SCC 105 [which was only prospectively overruled in* Balco, *(2012) 9 SCC 552, and remains good law for all arbitration agreements entered into on or prior to 6-9-2012], held, once parties consciously agreed that juridical seat of arbitration would be London and that arbitration agreement will be governed by laws of England, provisions of Pt. I of 1996 Act are not applicable to arbitration agreement and laws of England govern arbitration agreement — However, since substantive law governing contract is Indian law, enforcement of final award can be challenged before courts of India (as a foreign award), or, courts of England by applying Indian law — Arts. 32.1 and 32.2 of Production Sharing Contract (PSC) providing that contract is governed and is to be interpreted as per laws of India, but Art. 33 provides for resolution of disputes through arbitration to be held at London in terms of UNCITRAL, and laws of England to govern arbitration agreement — Art. 33 further providing that in case of failure to appoint arbitrator(s) or if both arbitrators failed to appoint third arbitrator, Permanent Court of Arbitration at The Hague will appoint an arbitrator or third arbitrator — Final partial award dt. 12-9-2012 made by Arbitral Tribunal at London, framing claims for relief, inter alia, in respect of royalties, cess, service tax and CAG audit challenged under S. 34 of 1996 Act by respondent before Delhi High Court as not arbitrable being contrary to public policy of India — Maintainability — Held, seat of arbitration shall determine proper law of arbitration agreement, when parties excluded applicability of 1996 Act by intent — Having made express provision in Art. 33.12 of PSC that arbitration agreement shall be governed by laws of England, making Art. 32.1 subject to Art. 33.12, and having agreed before Arbitral Tribunal that seat of arbitration is London, held, expression "laws of India" in Arts. 32.1 and 32.2 referred only to contractual obligations under substantive contract (i.e. PSC) but not to arbitration agreement — Both articles are separate and distinct as Art. 32 deals with law governing substantive contract and Art. 33 deals with dispute resolution mechanism — Also, having empowered Permanent Court of Arbitration at The Hague to appoint arbitrator/Arbitral Tribunal in case of failure of parties to appoint arbitrators, parties excluded application of 1996 Act by intent — Applicability of 1996 Act, thus, excluded by conscious decision and agreement of parties — Hence, contention that English law is applicable up to passing of partial final award and proper law of arbitration agreement is Indian law since Indian law includes 1996 Act, is rejected — However, held, enforcement of final award in India can be challenged before courts in India (as a foreign award), or, in England on ground of public policy since substantive laws governing contract (PSC) are Indian laws — Hence, held, application under S. 34 of 1996 Act before Delhi High Court was not maintainable. *Reliance Industries Ltd.* v. *Union of India*, (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737: AIR 2014 SC 3218: (2014) 4 CTC 75.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 28-5-2014]

Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810; Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished on facts

Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161: (2011) 3 SCC (Civ) 257, followed

C v. D, 2008 Bus LR 843: (2008) 1 Lloyd's Law 239: 2007 EWCA Civ 1282; Sulamerica Cia Nacional de Seguros SA v. Enesa Engelharia SA — Enesa, (2013) 1 WLR 102: 2012 EWCA Civ 638: 2012 WL 14764, approved

Hardy Oil and Gas Ltd. v. Hindustan Oil Exploration Co. Ltd., (2006) 1 Guj LR 658; Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA), held, approved

Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished

Union of India v. Reliance Industries Ltd., (2013) 199 DLT 469, reversed

Mustill and Boyd: Law and Practice of Commercial Arbitration in England, 2nd Edn., referred to

[**Ed.**: All the arbitration agreements entered on or prior to the date 6-9-2012 i.e. the date of decision of *Balco* v. *Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810 would be covered by *Bhatia International* v. *Bulk Trading S.A.*, (2002) 4 SCC 105 and *Venture Global Engg.* v. *Satyam Computer Services Ltd.*, (2008) 4 SCC 190 as they are the applicable law till the date 6-9-2012.]

[24] — Pt. I or Pt. II — Juridical seat of arbitration and proper law of arbitration agreement — Inter-relationship between — *Held, once parties consciously agreed that juridical seat of arbitration would be London and that arbitration agreement will be governed by laws of England, proper law of arbitration agreement would be laws of England and provisions of Pt. I of 1996 Act are not applicable to arbitration agreement. Reliance Industries Ltd.* v. *Union of India*, (2014) 7 SCC 603: (2014) 3

SCC (Civ) 737: AIR 2014 SC 3218: (2014) 4 CTC 75.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 28-5-2014]

Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161: (2011) 3 SCC (Civ) 257, followed

C v. D, 2008 Bus LR 843: (2008) 1 Lloyd's Law 239: 2007 EWCA Civ 1282; Sulamerica Cia Nacional de Seguros SA v. Enesa Engelharia SA — Enesa, (2013) 1 WLR 102: 2012 EWCA Civ 638: 2012 WL 14764, approved

Hardy Oil and Gas Ltd. v. Hindustan Oil Exploration Co. Ltd., (2006) 1 Guj LR 658, held, approved

Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished

Union of India v. Reliance Industries Ltd., (2013) 199 DLT 469, reversed

[25] — Pt. I or Pt. II — Laws that may apply to an arbitration — Doctrine of severability — Laws of different countries as proper law of the arbitration agreement/lex arbitri, and, as law of substantive contract — Law of substantive contract, held, does not determine law of arbitration agreement/lex arbitri — *Held, parties are entitled to agree that law of one country would govern substantive contract and laws of another country would apply to arbitration agreement — Parties can also agree that conduct of reference to arbitration would be governed by laws of yet a third country — In present case, parties had by agreement provided that substantive contract (PSC) will be governed by laws of India, arbitration agreement by laws of England and appointment of arbitrators by Permanent Court of Arbitration at The Hague in case of failure of parties to appoint arbitrator(s), and the arbitration proceedings will be conducted in accordance with the UNCITRAL Rules, 1976 — Further, agreement specifically provided that right to arbitrate disputes and claims under said contract shall survive termination of contract — Applying doctrine of severability, held, there is no scope for confusion as to law governing the substantive contract (PSC) and law governing arbitration agreement. Reliance Industries Ltd.* v. *Union of India*, (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737: AIR 2014 SC 3218: (2014) 4 CTC 75.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 28-5-2014]

Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810; Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished on facts

Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161: (2011) 3 SCC (Civ) 257, followed

C v. D, 2008 Bus LR 843: (2008) 1 Lloyd's Law 239: 2007 EWCA Civ 1282; Sulamerica Cia Nacional de Seguros SA v. Enesa Engelharia SA — Enesa, (2013) 1 WLR 102: 2012 EWCA Civ 638: 2012 WL 14764, approved

Hardy Oil and Gas Ltd. v. Hindustan Oil Exploration Co. Ltd., (2006) 1 Guj LR 658; Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA), held, approved

Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished

Union of India v. Reliance Industries Ltd., (2013) 199 DLT 469, reversed

Mustill and Boyd: Law and Practice of Commercial Arbitration in England, 2nd Edn., referred to

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[26] — Pt. I or Pt. II — Law(s) that may apply to an arbitration — Three sets of laws that may apply to an arbitration: (i) proper law of the contract; (ii) proper law of the arbitration agreement/lex arbitri; and (iii) proper law of the conduct of arbitration/lex fori/curial law — Distinguished and explained — Held, all three sets of laws can be different in a given arbitration — *Words and Phrases — "Lex fori" and "curial law". Reliance Industries Ltd.* v. *Union of India*, (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737: AIR 2014 SC 3218: (2014) 4 CTC 75.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 28-5-2014]

Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA), held, approved

Mustill and Boyd: Law and Practice of Commercial Arbitration in England, 2nd Edn., referred to

[27] — Pt. I, S. 34 or Pt. II, S. 48 — Challenge to foreign-seated award on ground of public policy — Application of Pt. I to foreign awards — Pre-*Balco* agreement — Held, applicability of Pt. I is not dependent on nature of challenge to award but on establishing that 1996 Act is applicable to arbitration agreement — *Final partial award made by Arbitral Tribunal at London, framing claims (issues) for relief in respect of royalties, cess, service tax and CAG audit, challenged as not arbitrable being contrary to public policy of India in S. 34, 1996 Act application before Delhi High Court — Maintainability — Held, merely because Arbitral Tribunal has held that claims are arbitrable does not mean that claims have been accepted and award adverse to public policy of India has been given — Further held, arbitration agreement cannot be set aside on plea that award, if made against Government of India, would violate public policy of India — In instant case, parties excluded*

application of 1996 Act by conscious decision and agreement — Further, there is no apparent or so patently obvious violation of Indian laws in any of the claims — Hence, held, petition under S. 34 of 1996 Act before Delhi High Court not maintainable. Reliance Industries Ltd. v. *Union of India*, (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737: AIR 2014 SC 3218: (2014) 4 CTC 75.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 28-5-2014]

Balco v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810; Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished on facts

Videocon Industries Ltd. v. Union of India, (2011) 6 SCC 161: (2011) 3 SCC (Civ) 257, followed

C v. D, 2008 Bus LR 843: (2008) 1 Lloyd's Law 239: 2007 EWCA Civ 1282; Sulamerica Cia Nacional de Seguros SA v. Enesa Engelharia SA — Enesa, (2013) 1 WLR 102: 2012 EWCA Civ 638: 2012 WL 14764, approved

Hardy Oil and Gas Ltd. v. Hindustan Oil Exploration Co. Ltd., (2006) 1 Guj LR 658, held, approved

Venture Global Engg. v. Satyam Computer Services Ltd., (2008) 4 SCC 190, distinguished

Union of India v. Reliance Industries Ltd., (2013) 199 DLT 469, reversed

— S. 2(1)(b) *See also* S. 7

[28] — Ss. 2(1)(b), 7(3), 16 and 34(2)(a)(iv) — Excepted matters — Arbitrator deciding a claim specifically excluded from arbitration by agreement — Impermissibility — Effect of such excepted matter being referred for arbitration or issue being framed thereon — Severability of remainder of award — *Held, even if a non-arbitrable dispute is referred to arbitrator or even if an issue is framed by arbitrator as to such dispute, it is not open for an arbitrator to arbitrate since it is beyond his jurisdiction — Mere reference of non-arbitrable dispute to arbitration or arbitrator framing an issue as to an excepted dispute, does not amount to agreement by parties to refer said dispute for arbitration — When law specifically makes a provision with regard to formation of a contract in a particular manner, no presumption can be made with regard to a contract if the contract is not entered into by the prescribed mode — Cl. 39 of GCC (general conditions of contract) provided that for any extra work not covered under the contract undertaken by contractor and for which he incurs expenditure for which rates are not available in schedule of rates, he is entitled to be paid at the rates fixed by Engineer and if not satisfied with said decision, he may appeal to Chief Engineer whose decision is final and binding on both parties — However, in terms of Cl. 63 of GCC, decision taken by Chief Engineer under Cl. 39 an excepted matter, not amenable for arbitration — In instant case, rejecting objection of parties that though referred to arbitration, dispute as to payment for extra work is excepted matter beyond purview of arbitrator, arbitrator rendered decision on said dispute and made award — Unsustainability — Held, arbitrator is not empowered to arbitrate upon disputes covered by Cl. 39 as said clause specifically excludes certain disputes as "excepted disputes" from arbitration — Since arbitrator exceeded his jurisdiction by rendering award on non-arbitrable dispute, that part of award is bad in law and is quashed — Liberty granted to appellant to take appropriate legal action for recovery of payment for extra work done* (Paras 14 to 19). *Harsha Constructions* v. *Union of India*, (2014) 9 SCC 246: (2014) 4 SCC (Civ) 803: AIR 2015 SC 270: (2015) 1 Mah LJ 566.

Bench Strength **2**. Coram: **A.R. Dave** and *Vikramajit Sen*, JJ. [Date of decision: 5-9-2014]

Northern Railway v. Sarvesh Chopra, (2002) 4 SCC 45, impliedly followed

[**Ed.**: In *Northern Railway* v. *Sarvesh Chopra*, (2002) 4 SCC 45, it was held (SCC p. 56, para 16): "If the arbitrator allows a claim covered by an excepted matter, the award would not be legal merely because the claim was referred by the court to arbitration. The award would be liable to be set aside on the ground of error apparent on the face of the award or as vitiated by legal misconduct of the arbitrator."]

— S. 2(1)(e) *See also* Ss. 14(2); 34

[29] — Ss. 2(1)(e), 34 & 42 and Ss. 15 & 20 CPC — Challenge to award — Concurrent jurisdiction of two courts — Proper court, when both High Court (under its Ordinary Original Civil Jurisdiction) and District Court (being Principal Civil Court of Original Jurisdiction) have jurisdiction — Held, wherever High Court exercises ordinary original civil jurisdiction, challenge to award lies to High Court only — *Appellant filed application challenging arbitral award before Principal District Judge, Thane (since it had territorial jurisdiction over subject matter) and on the same date respondent also filed an application before High Court of Bombay invoking its ordinary original jurisdiction — Maintainability — High Court transferring applications before Principal District Judge, Thane to itself — Legality — Held, if option is to be exercised between High Court (under its Ordinary Original Civil Jurisdiction) and District Court (as Principal Civil Court of Original Jurisdiction), application lies to High Court only, since it is superior-most court exercising ordinary original civil jurisdiction — Further held, it makes no difference, if Principal Civil Court of Original Jurisdiction, is in same*

district over which High Court exercises original jurisdiction, or in some other district [**Ed.**: *It would seem that this last proposition would be true only so long as the High Court in exercise of its ordinary original civil jurisdiction has jurisdiction to decide the questions forming the subject-matter of the arbitration as if the same had been the subject-matter of a suit—vide S. 2(1)(e) of the 1996 Act*] — *Also held, provisions of CPC, 1908 that suit shall be filed in court of lowest grade is not applicable to 1996 Act — District Judge, Thane directed to transfer applications before it to High Court for adjudication — CPC, 1908, Ss. 15 and 20. State of Maharashtra* v. *Atlanta Ltd.*, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206: AIR 2014 SC 1093: (2014) 3 LW 81.

Bench Strength **2**. Coram: *A.K. Patnaik* and **J.S. Khehar**, JJ. [Date of decision: 16-1-2014]

Atlanta Ltd. v. Road Deptt., (2013) 4 Mah LJ 601: (2013) 4 Bom CR 305, affirmed

— S. 2(1)(f) *See also* S. 11(8)

[30] — S. 2(1)(f) — International commercial arbitration — Case, if falls under — Determination of — Some parties to main contract/arbitration being Indian and others not Indian — Indian party authorised to initiate litigation/arbitration on behalf of itself and foreign parties — Effect — *Plea of respondent that, dispute in instant case does not fall under international commercial arbitration since it is between two Indian entities and if third arbitrator is appointed, it should only be an Indian national but none else — Tenability — Held, two out of the four parties to arbitration agreement are foreign companies based outside India and each petitioner is party to production sharing contract (PSC) that contained arbitration agreement (Art. 33) — PSC makes it clear that all three entities (RIL, Niko and BP) have rights and obligations under PSC, including cost of petroleum, profit petroleum and contract costs, all of which are fundamental issues in instant dispute — Joint operating agreement between them empowered petitioner to initiate litigation on behalf of all the parties — Petitioner acts under PSC, including commencement of arbitration, not only on its behalf, but also on behalf of all constituents of contract including the two foreign companies (Niko and BP) — There is a significant and broad-ranging dispute between RIL, Niko and BP on one hand and respondent on the other, that goes to heart of main contractual rights and obligations under PSC — Hence, held, instant arbitration is international commercial arbitration empowering Chief Justice of India/designate to appoint arbitrator. Reliance Industries Ltd.* v. *Union of India*, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163: AIR 2014 SC 2342.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 29-4-2014]

Redfern and Hunter on International Arbitration, Vth Edn. (2009), Para 4.59; Gary B. Born: International Commercial Arbitration, Vol. 1 (2009), relied on

Malaysian Airlines Systems BHD (II) v. Stic Travels (P) Ltd., (2001) 1 SCC 509; MSA Nederland B.V. v. Larsen & Toubro Ltd., (2005) 13 SCC 719, clarified

Northern Railway Admn., Ministry of Railway v. Patel Engg. Co. Ltd., (2008) 10 SCC 240, applied

[31] — Ss. 2(2), 9, 20 and 45 — Place or Juridical seat or "seat" of arbitration and applicable curial law i.e. procedural law governing arbitration — Determination of — Construction of arbitration agreement to determine — Closest and intimate connection to arbitration test — Applicability of — "Seat" and "venue", distinction between — Exclusivity of supervisory jurisdiction of courts of country whose curial law is applicable/where juridical seat of arbitration is situate — Anti-suit injunction action against courts of any other country — Maintainability of — Under arbitration clause (Cls. 17 and 18.1 of IPLA, the agreement concerned) parties agreed to refer future disputes and claims to an Arbitral Tribunal consisting of 3 arbitrators, designating London as the "venue" of arbitration and also stipulating that governing law of the contract/any disputes to be the laws of India and selecting 1996 Act, as curial law/law governing arbitration proceedings — "Seat" of arbitration whether London or in India — Term "venue" whether to be read as "seat" — *Held, it is an accepted proposition of law that the juridical seat/seat of arbitration normally carries with it the choice of that country's arbitration/curial law — But this would arise only if the curial law is not specifically chosen by the parties — In present case, law governing the contract, the law governing the arbitration agreement and the law of arbitration/curial law are all stated to be Indian — London is mentioned only as a "venue" of arbitration and in light of the above choice of all the governing laws, especially the curial law, "venue" cannot be read as the "seat" of arbitration — Parties have chosen Pt. I of 1996 Act, which can only apply if seat of arbitration is in India, as held in* Balco, *(2012) 9 SCC 552* — It is necessary not to confuse the legal seat of arbitration with the geographically convenient place or places for holding hearings — Hence, seat of arbitration is in India — Furthermore, seat of arbitration would remain in India which is the natural forum for all remedies in*

relation to the disputes, having such a close and intimate connection with India — Once the seat of arbitration has been fixed in India, held, it follows that Indian courts have exclusive jurisdiction to exercise the supervisory powers over the arbitration — Considerations for designating a convenient venue for arbitration (as London) cannot be understood as conferring concurrent supervisory jurisdiction on the English courts over the arbitration proceedings or disputes between the parties in general — Hence, High Court's conclusion that seat of arbitration is in India upheld, but its conclusion that English courts had concurrent jurisdiction and therefore an anti-suit injunction action would not be maintainable before Indian courts, set aside — Anti-suit injunction granted by the Indian (Daman) trial court, restored — Parties directed to proceed to arbitration referring all the disputes arising between them in relation to the various agreements between them, including dispute as to whether IPLA was a concluded contract, to the Arbitral Tribunal for adjudication — Further, respondents restrained from proceeding with any of the actions pursued in English Courts and from approaching the English courts for seeking any declaration/relief/clarification and/or instituting any proceedings that may result in delaying or otherwise affect the constitution of the Arbitral Tribunal and its proceedings — However, seat of arbitration being in India and 1996 Act being the curial law, recourse to Indian courts as per Pt. I of 1996 Act, including to S. 9 thereof, held, available to the parties — Specific Relief Act, 1963, S. 38 — CPC, 1908, S. 20. Enercon (India) Ltd. v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

Shashoua v. Sharma, (2009) 2 Lloyd's Law Rep 376; Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48; C v. D, 2008 Bus LR 843: 2007 EWCA Civ 1282; SulamTrica Cia Nacional de Seguros SA v. Enesa Engelharia SA, 2012 EWCA Civ 638: (2013) 1 WLR 102 (CA); Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA); Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48; Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 (QBD): 2008 EWHC 426 (TCC); E.I. Dupont de Nemours & Co. v. Agnew, (1987) 2 Lloyd's Rep 585; Enercon GMBH v. Enercon (India) Ltd., 2012 EWHC 3711 (Comm); A v. B, 2006 EWHC 2006 (Comm): (2007) 1 All ER (Comm) 591: (2007) 1 Lloyds Rep 237, approved

Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810, explained and followed

Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA); Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 (QBD): 2008 EWHC 426 (TCC), explained and approved

Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105, held, overruled prospectively w.r.t. arbitration agreements dated 6-9-2012 or thereafter, though applicable in present case

Dicey Morris & Collins, The Conflict of Laws (15th Edn., Sweet & Maxwell, London 2012); Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009), in Para 3.54, relied on

Enercon (India) Ltd. v. Enercon GmbH, (2012) 6 Bom LR 3414, reversed on this point

Enercon (India) Ltd. v. Enercon GmbH, (2012) 6 Bom LR 3414, partly affirmed

*[**Ed.**: The ratio of *Bhatia International* v. *Bulk Trading S.A.*, (2002) 4 SCC 105 applies to the facts of the present case since the arbitration agreement was entered into prior to 6-9-2012. The ratio of *Bhatia* allows for precisely such an absurd result. Since the ratio of *Bhatia International case* is that the provisions of Part I of the 1996 Act are equally applicable to foreign-seated arbitrations, unless any or all provisions of Part I of the 1996 Act have been excluded by agreement between the parties, expressly or by implication. However in the facts of the present case even the ratio of *Bhatia International case* would not seem to change the result since the parties herein have *expressly* chosen the Indian law i.e. the 1996 Act as the curial law.]

[**Ed.**: *See* para 156.4 for the exact contours of the anti-suit injunction that has been granted.]

[32] — Ss. 2(2), 9, 20 and 45 — Territorial nexus between "seat" or the "place" of arbitration vis-à-vis the procedural/curial law — Reiterated, following *Balco*, (2012) 9 SCC 552, the "seat" of arbitration normally carries with it the choice of that country's arbitration/curial law — *Arbitrations are anchored to the seat/place/situs of arbitration — In an international commercial arbitration, venue can often be different from the seat of arbitration — In such circumstances, the hearing of the arbitration will be conducted at the venue fixed by the parties, but this would not bring about a change in the seat of the arbitration. Enercon (India) Ltd.* v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

Shashoua v. Sharma, (2009) 2 Lloyd's Law Rep 376; Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48; C v. D, 2008 Bus LR 843: 2007 EWCA Civ 1282; SulamTrica Cia Nacional de Seguros SA v. Enesa Engelharia SA, 2012 EWCA Civ 638: (2013) 1 WLR 102 (CA); Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA); Union of India v. McDonnell Douglas Corpn., (1993) 2 Lloyd's Rep 48; Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 (QBD): 2008 EWHC 426 (TCC), approved

Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552: (2012) 4 SCC (Civ) 810, explained and followed

Naviera Amazonica Peruana S.A. v. Compania Internacional De Seguros Del Peru, (1988) 1 Lloyd's Rep 116 (CA); Braes of Doune Wind Farm (Scotland) Ltd. v. Alfred McAlpine Business Services Ltd., 2008 Bus LR D 137 (QBD): 2008 EWHC 426 (TCC), explained and approved

Bhatia International v. Bulk Trading S.A., (2002) 4 SCC 105, held, overruled prospectively w.r.t. arbitration agreements dated 6-9-2012 or thereafter, though applicable in present case

Dicey Morris & Collins, The Conflict of Laws (15th Edn., Sweet & Maxwell, London 2012); Redfern and Hunter on International Arbitration (5th Edn., Oxford University Press, Oxford/New York 2009), in Para 3.54, relied on

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— **S. 2(9)** *See* S. 43

— **S. 4** *See also* S. 7(3)

[33] — S. 4 — Waiver — Objection that petitioner raised disputes only on his behalf but not on behalf of the other parties to the contract — *Held, having not raised such objection at any stage earlier, respondent is barred from taking such objection — In fact, the objection was factually incorrect, since earlier petition for appointment of arbitrator was filed on behalf of all the petitioners, and present petition being a continuation of the same proceedings i.e. appointment of third arbitrator since arbitrators of both the parties failed to appoint third arbitrator, it could not be said that disputes were not raised on behalf of all parties concerned by petitioner*

There is a significant and broad-ranging dispute between RIL, Niko and BP on the one hand and the UoI on the other hand, that goes to the heart of the main contractual rights and obligations under the PSC. Furthermore, it is a matter of record that in the correspondence leading to the filing of the earlier arbitration petition being AP No. 8 of 2012, no objection about Niko and BP not being a party to the dispute had been taken by the respondent. In fact, AP No. 8 of 2012 was disposed of on a joint request made by the parties that two arbitrators having been nominated, no further orders were required. Such objections, at this stage, cannot be countenanced as the commencement of arbitration has already been much delayed. Having considered the aforesaid correspondence, it is not possible to hold that the correspondence is only on behalf of the RIL. (Paras 51 and 58). *Reliance Industries Ltd.* v. *Union of India*, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163: AIR 2014 SC 2342.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 29-4-2014]

[34] — Ss. 4, 8, 7 and 11(6) — Appointment of arbitrator — Novation of contract by mutual consent — Reference to arbitration based on subsequent consent of parties, despite agreement expressly prohibiting settlement of disputes or claims by arbitration — *Cl. 25 of agreement providing for referring of disputes to Dispute Review Expert, whose decision shall be final and binding on parties, unless either of the parties requests for reference of said decision to arbitration — Further, term in agreement stipulated that arbitration shall not be a means of settlement of disputes or claims under the contract — As Disputes Review Expert was not appointed, appellant filed application for appointment of arbitrator — Respondent contended that in absence of nomination of Disputes Review Expert no valid arbitration agreement exists — However, in view of parties mutually filing an application appointing a named arbitrator, without going into merits of the case, matter referred to said arbitrator — CPC, 1908, S. 89 — Contract Act, 1872, Ss. 62 and 63* (Paras 8, 9, 11, 12 to 14). *Kaikara Construction Co.* v. *State of Kerala*, (2014) 7 SCC 352: (2014) 3 SCC (Civ) 704: AIR 2014 SC 3067: (2014) 5 CTC 107: (2014) 118 Cut LT 320.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Dipak Misra*, JJ. [Date of decision: 1-7-2014]

Kaikkara Construction Co. v. State of Kerala, Arbitration Request No. 39 of 2009, order dated 19-7-2010 (Ker); Kaikkara Construction Co. v. State of Kerala, Review Petition No. 816 of 2010, order dated 2-2-2011 (Ker), reversed

[35] — Ss. 4, 12, 13, 16, 34 and 11 — Jurisdiction of Arbitral Tribunal — Objection to — Waiver of — Inference — *Order of High Court appointing sole arbitrator not challenged by appellant, and hence, attaining finality — Moreover, appellant not only filing statement of defence but also raising counterclaims against respondent — Hence, held, since appellant had not raised objection with regard to competence/jurisdiction of Arbitral Tribunal before arbitrator, same shall be deemed to have been waived — High Court was justified in concluding that appellant having failed to raise plea of jurisdiction before Arbitral Tribunal cannot be permitted to raise the same for first time in High Court. Union of India* v. *Pam Development (P) Ltd.*, (2014) 11 SCC 366: (2014) 4 SCC (Civ) 117: (2014) 104 ALR 271: (2014) 137 AIC 143.

Bench Strength **2**. Coram: *S.S. Nijjar* and *Ranjana P. Desai*, JJ. [Date of decision: 18-2-2014]

BSNL v. Motorola India (P) Ltd., (2009) 2 SCC 337: (2009) 1 SCC (Civ) 524, followed

Union of India v. Pam Development (P) Ltd., AIR 2005 Cal 332: (2005) 4 CHN 279; Union of India v. Pam Developments (P) Ltd., (2004) 2 Arb LR 480 (Cal), affirmed

— S. 5 *See also* Ss. 8; 14(2); 44; 45

[36] — S. 5 — Invocation of Art. 226 against any order passed by Arbitral Tribunal — Reiterated, intervention by High Court under Art. 226 of Constitution in arbitration proceedings is not maintainable (Para 8). *Lalitkumar V. Sanghavi* v. *Dharamdas V. Sanghavi*, (2014) 7 SCC 255: (2014) 3 SCC (Civ) 688: (2015) 1 Mah LJ 1: (2014) 104 ALR 276: (2015) 1 MPLJ 70: (2014) 136 AIC 117.

Bench Strength **3**. Coram: *Dr B.S. Chauhan*, **Jasti Chelameswar** and *M. Yusuf Eqbal*, JJ. [Date of decision: 4-3-2014]

SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618, followed

Lalitkumar V. Sanghavi v. Dharamdas V. Sanghavi, Arbitration Application No. 44 of 2008, order dated 24-9-2010 (Bom), reversed

— S. 7 *See* Ss. 4; 8; 11(6); 45

See also 'Arbitration Act, 1940', Ss. 2(a), 8 and 34, (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455

[37] — Ss. 7, 8, 11 and 2(b) — Arbitration clause — What is — Reference to arbitration — When permissible — Provision for specified adjudicator to act judicially in compliance with principles of natural justice — Existence of clause expressing intention to refer disputes to arbitrator — Mandatory need for — *Held, unless there is an arbitration agreement which provides that parties agree to submit all or certain disputes to adjudication of arbitrator, no reference can be made to arbitration — Intention of the parties, expressing consensual acceptance to refer disputes to arbitrator is mandatory — Clause in agreement (Cl. 48) providing for disputes or differences arising out of performance of works to be referred to and settled by the Engineer within 30 days, and his decision to be final and binding on parties until completion of works — Construing said clause as arbitration clause, Designate of High Court appointed sole arbitrator to adjudicate matters in dispute — Tenability — Held, said clause not having provided any procedure by which Engineer is required to act judicially by following principles of natural justice or to consider submissions of both parties, cannot be treated as arbitration clause — Cl. 48 is incorporated to avoid delay and stoppage of work and to impose burden on contractor for smooth carrying on of works — Binding nature of decision of Engineer is only until completion of works with emphasis on performance of contract forcing contractor to proceed with works with due diligence — Said clause neither implies intention of parties to get disputes adjudicated through arbitration nor does it provide for resolution of disputes — Further, Cl. 4.1 of agreement providing for adjudication of differences or disputes arising out of the agreement by competent civil court, reinforces interpretation that Cl. 48 does not provide for resolution of disputes by arbitration — Thus, held, no arbitration clause exists in the agreement — Order of High Court appointing arbitrator is set aside — CPC, 1908, S. 89(1)(a)* (Paras 8 and 24 to 26). *Karnataka Power Transmission Corpn. Ltd.* v. *Deepak Cables (India) Ltd.*, (2014) 11 SCC 148: (2014) 4 SCC (Civ) 33: AIR 2014 SC 1626: (2014) 5 LW 134.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 7-4-2014]

State of U.P. v. Tipper Chand, (1980) 2 SCC 341; State of Orissa v. Damodar Das, (1996) 2 SCC 216; State of Orissa v. Bhagyadhar Dash, (2011) 7 SCC 406: (2011) 3 SCC (Civ) 721; Jagdish Chander v. Ramesh Chander, (2007) 5 SCC 719; K.K. Modi v. K.N. Modi, (1998) 3 SCC 573; Bharat Bhushan Bansal v. U.P. Small Industries Corpn. Ltd., (1999) 2 SCC 166; Bihar State Mineral Development Corpn. v. Encon Builders (I) (P) Ltd., (2003) 7 SCC 418, applied

Punjab State v. Dina Nath, (2007) 5 SCC 28; Governor-General in Council v. Simla Banking and Industrial Co. Ltd., AIR 1947 Lah 215: 226 IC 444; Dewan Chand v. State of J&K, AIR 1961 J&K 58; Ram Lal Jagan Nath v. Punjab State, AIR 1966 P&H 436: (1966) 68 PLR 522: ILR (1966) 2 P&H 428, distinguished

Rukmanibai Gupta v. Collector, (1980) 4 SCC 556, distinguished on facts

Deepak Cables (India) Ltd. v. Karnataka Power Transmission Co. Ltd., Civil Misc. Petition No. 7 of 2013, order dated 1-3-2013 (KAR); SPML Infra Ltd. v. Karnataka Power Transmission Co. Ltd., Civil Misc. Petition No. 62 of 2011, order dated 25-7-2011 (KAR); Subhash Projects & Mktg. Ltd. v. Karnataka Power Transmission Corpn. Ltd., WP No. 28710 of 2009, order dated 10-6-2010 (KAR), reversed

Russell on Arbitration, 19th Edn., p. 59; Russell on Arbitration, 21st Edn., at p. 37, para 2-014, cited

[38] — Ss. 7, 8, 11, 16, 44 and 45 — Arbitration agreement — Validity of — Grounds on which may be challenged — *Held, validity of arbitration agreement cannot be questioned on grounds that it restricted the right of the parties to move the courts for appropriate relief and also barred the right to trial by a jury, and thus was void for being opposed to public policy as provided in S. 23 of the Contract Act, 1872 and was also void for being an agreement in restraint of the legal proceedings in view of S. 28, since arbitration clauses are expressly saved under S. 28 Exception 1 of Contract Act, 1872 — Contract Act, 1872, Ss. 28 Exceptions 1 and 23. World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*,

(2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

[39] — Ss. 7, 11(6), 11(8) and 2(b) — Arbitration agreement — Essence of — Adjudication of disputes by independent/neutral person/body — Officer or authority of one of the parties overseeing/having jurisdiction over subject-matter of the contract cannot be an arbitrator nor can a clause empowering such person to resolve disputes be an arbitration clause — *Clause empowering Chief Engineer/Engineer/Board of Directors of one of the parties (respondent government company) who had jurisdiction/was responsible for subject-matter of contract, to settle disputes between parties at the first instance and making it final and binding on them, held, cannot be an arbitration clause — Cl. 29 of agreement providing for referring of disputes as to contract designs, drawings, specifications, estimates, instructions or orders, termination or abandonment, in the first place, to Chief Engineer who had jurisdiction over the work — Held, said clause is not arbitration clause since Chief Engineer not being an independent authority, cannot be invested with power to adjudicate upon rights of parties to dispute or difference — Further, he is not required to hear parties or to take evidence, oral or documentary before taking any decision — Expression "in the first place" in said clause suggests non-adjudicatory decision of Chief Engineer which is subject to right of aggrieved party to seek remedy in a court of law — Thus, held, Cl. 29 and similar clauses cannot be treated as arbitration clauses. P. Dasaratharama Reddy Complex* v. *Government of Karnataka*, (2014) 2 SCC 201: (2014) 1 SCC (Civ) 754: AIR 2014 SC 168.

Bench Strength **3**. Coram: **G.S. Singhvi**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 25-10-2013]

State of U.P. v. Tipper Chand, (1980) 2 SCC 341; Vishnu v. State of Maharashtra, (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455, followed

P. Dasaratharama Reddy Complex v. State of Karnataka, Civil Misc. Petition No. 79 of 2001, order dated 14-9-2001 (KAR); P. Dasaratharama Reddy Complex v. State of Karnataka, WP No. 42560 of 2001, order dated 10-10-2002 (KAR), affirmed

Mysore Construction Co. v. Karnataka Power Corpn. Ltd., ILR 2000 KAR 4953, approved

Mallikarjun v. Gulbarga University, (2004) 1 SCC 372; Punjab State v. Dina Nath, (2007) 5 SCC 28; Krishna Bhagya Jala Nigam Ltd. v. G. Harischandra Reddy, (2007) 2 SCC 720; Karnataka SRTC v. M. Keshava Raju, (2004) 1 Arb LR 507, clarified and distinguished on facts

[40] — Ss. 7, 16, 44 & 45 and 8 & 11 — Independence of arbitration agreement from underlying contract — Rationale for, explained — *Held, concept of separability of the arbitration clause/agreement from the underlying contract is a necessity to ensure the intention of the parties to resolve the disputes by arbitration does not evaporate into thin air with every challenge to the legality, validity, finality or breach of the underlying contract — S. 16 accepts the concept that the main contract and the arbitration agreement form two independent contracts — Commercial rights and obligations are contained in the underlying, substantive, or the main contract — It is followed by a second contract, which expresses the agreement and the intention of the parties to resolve the disputes relating to the underlying contract through arbitration. Enercon (India) Ltd.* v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

— S. 7(3) *See also* S. 2(1)(b)

[41] — Ss. 7(3) and 4 — Arbitration agreement — Necessity of, for referring disputes to arbitration — Mode of creating valid arbitration agreement — *Held, contract with regard to arbitration must be in writing since arbitration arises from contract — Further held, no presumption can be made as to arbitration unless there is specific written contract* (Para 18). *Harsha Constructions* v. *Union of India*, (2014) 9 SCC 246: (2014) 4 SCC (Civ) 803: AIR 2015 SC 270: (2015) 1 Mah LJ 566.

Bench Strength **2**. Coram: **A.R. Dave** and *Vikramajit Sen*, JJ. [Date of decision: 5-9-2014]

Harsha Constructions v. Union of India, 2005 SCC OnLine AP 730: (2005) 6 ALD 287, partly reversed

— S. 8 *See* Ss. 4; 7; 43; 44; 45

See also RENT CONTROL AND EVICTION — 'Eviction suit/Trial', (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135

[42] — S. 8 — Power of judicial authority under, to refer the parties to arbitration — Exercise of — Cannot be exercised in absence of operative arbitration agreement — *Though in present case arbitration clause was rendered in operative by bar in overriding statute* (Para 11). *Ranjit Kumar Bose* v. *Anannya Chowdhury*, (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135: AIR 2014 SC 1534: (2014) 103 ALR 669: (2014) 136 AIC 258: (2014) 2 Cal LJ 141.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 7-3-2014]

[43] — Ss. 8, 5, 11, 16 and 45 — Reference to arbitration — Appointment of arbitrator — Allegations that underlying contract is patently

void — Survival of arbitration clause independent of main agreement — Power of court when contract is found to be patently void without requirement of further proof — Defects which render contract "void" and those that render contract "voidable", distinguished — *Reiterated, since arbitration clause in a contract is treated as an agreement independent of the other terms of the contract, mere adjudication that underlying contract is null and void does not render arbitration clause invalid — Thus, courts are empowered to refer disputes to arbitration even if underlying contract is found to be void ab initio — In view of Ss. 5 and 16, all matters including the issue as to whether main contract was void/voidable can be referred to arbitration — However, while exercising jurisdiction under S. 11, court can decline to refer disputes to arbitration if contract is patently void or where it reaches a conclusion that contract is void on a meaningful reading of contract document without requirement of any further proof — Mere claim that contract is void however will not suffice — Further held, court cannot decline reference to arbitration on allegations of fraud, coercion, unsoundness of mind, undue influence, and misrepresentation, since all of the above defects result in voidable, not void, contracts — Words and Phrases — "Void" and "voidable" — Contract Act, 1872, Ss. 2(j) and 11 to 27. Swiss Timing Ltd.* v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642: AIR 2014 SC 3723: (2014) 6 Mah LJ 662: (2015) 1 LW 101: (2014) 3 CTC 830: (2014) 4 MPLJ 527.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 28-5-2014]

N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72: (2010) 1 SCC (Civ) 12, whether per incuriam in light of provisions of Arbitration and Conciliation Act, 1996, and Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503 & P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; Guru Granth Saheb Sthan Meerghat, Vanaras v. Ved Prakash, (2013) 7 SCC 622: (2013) 3 SCC (Civ) 644: (2013) 3 SCC (Cri) 615, explained and followed

India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., (2007) 5 SCC 510, distinguished on facts

Spelling and Lewis: A Treatise on Law Governing Injunctions, referred to

[**Ed.**: See also *Booz Allen and Hamilton Inc.* v. *SBI Home Finance Ltd.*, (2011) 5 SCC 532, at para 36: "The well-recognised examples of *non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences... .*" (emphasis supplied)]

[44] — Ss. 8, 5, 11, 16 and 45 — Reference to arbitration — Appointment of arbitrator — Simultaneous arbitral and criminal proceedings — Permissibility and warrantedness — Matters to be considered — Prejudice to accused, if any — Balance of convenience in permitting simultaneous proceedings — Determination of — Use of word "shall" in S. 8 — Significance — *Held, it is mandatory for courts to refer disputes to arbitration, if agreement between parties provides for reference to arbitration — Thus, registering of criminal case in relation to agreement concerned on grounds of fraud, corruption and collusion against certain members of both parties, held, is not an absolute bar to refer disputes to arbitration — Stalling of arbitration proceedings till disposal of criminal proceedings, not warranted in present case — Furthermore, arbitrator can decide allegations of fraud in obtaining of the contract — Objection against reference of disputes, as to non-payment of contractual amounts for service rendered, to arbitration raised by respondent on ground that agreement had been rendered void as per terms of contract since criminal proceedings had been initiated on charges of indulgence in corrupt practices to induce execution of agreement — On the basis of registration of criminal case by CBI against Chairman of respondent Commonwealth Games Organising Committee and some officials of petitioner, respondent sought to invoke non-liability clause in Cls. 29 and 34 of agreement that empowered respondent to terminate contract in case of corrupt, fraudulent, collusive or coercive practices in connection with agreement — Contention raised was that since said allegations could not be properly gone into by arbitrator, decision of criminal proceedings should be awaited instead of constitution of Arbitral Tribunal, as respondent would not be liable to petitioner if officials who manipulated grant of contract in favour of petitioner were found guilty in criminal trial — Held, it is mandatory for courts to refer disputes to arbitration, if agreement between parties provides for reference to arbitration — Thus, registering of criminal case as to execution of said contract is not an absolute bar to refer disputes to arbitration — Further held, there is no inherent risk of prejudice to any party in permitting arbitration to proceed simultaneously with criminal proceedings since findings recorded by Arbitral Tribunal are not binding in criminal proceedings — In an eventuality where ultimately award is rendered by Arbitral Tribunal, and criminal proceedings result in conviction rendering underlying contract void as provided for in the contract, necessary plea can be taken on the basis of such conviction to resist execution/enforcement of award — If matter is not*

referred to arbitration and criminal proceedings result in acquittal leaving no ground for claiming that underlying contract is void or voidable, it would result in undesirable delay in arbitration — Further held, allegations of impropriety in grant of contract in favour of petitioner and alleged charging of exorbitant rates can be duly considered by Arbitral Tribunal — Also, in instant case, ground that contract had been rendered void in view of initiation of criminal proceedings was never taken till filing of present petition before Chief Justice — Thus, balance of convenience is tilted more in favour of permitting arbitration proceedings to continue — Evidence Act, 1872, Ss. 40 to 43. Swiss Timing Ltd. v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642: AIR 2014 SC 3723: (2014) 6 Mah LJ 662: (2015) 1 LW 101: (2014) 3 CTC 830: (2014) 4 MPLJ 527.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 28-5-2014]

N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72: (2010) 1 SCC (Civ) 12, whether per incuriam in light of provisions of Arbitration and Conciliation Act, 1996, and Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503 & P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; Guru Granth Saheb Sthan Meerghat, Vanaras v. Ved Prakash, (2013) 7 SCC 622: (2013) 3 SCC (Civ) 644: (2013) 3 SCC (Cri) 615, explained and followed

India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., (2007) 5 SCC 510, distinguished on facts

Spelling and Lewis: A Treatise on Law Governing Injunctions, referred to

[**Ed.**: See also *Booz Allen and Hamilton Inc.* v. *SBI Home Finance Ltd.*, (2011) 5 SCC 532, at para 36: "The well-recognised examples of *non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences...*." (emphasis supplied)]

[45] — Ss. 8, 5, 11, 16 and 45 — Reference to arbitration — Appointment of arbitrator — Statutory inclination towards arbitration — *Held, policy of least interference in arbitration proceedings, recognises general principle that function of courts in matters relating to arbitration is to support arbitration process. Swiss Timing Ltd.* v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642: AIR 2014 SC 3723: (2014) 6 Mah LJ 662: (2015) 1 LW 101: (2014) 3 CTC 830: (2014) 4 MPLJ 527.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 28-5-2014]

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; Guru Granth Saheb Sthan Meerghat, Vanaras v. Ved Prakash, (2013) 7 SCC 622: (2013) 3 SCC (Civ) 644: (2013) 3 SCC (Cri) 615, explained and followed

India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., (2007) 5 SCC 510, distinguished on facts

Spelling and Lewis: A Treatise on Law Governing Injunctions, referred to

[46] — Ss. 8, 7 and 11 — Reference to arbitration by court — Procedure to be followed when arbitration agreement is contained in compulsorily registerable insufficiently stamped lease deed — Period of lease five years — *Held, while pressing the application under S. 8 of 1996 Act petitioner did not show any inclination to pay the deficit stamp duty on the lease deed nor expressed desire and willingness to pay the penalty as may be imposed by the Collector if the document was impounded and stamp duty payable thereon was determined — Hence held, benefit of procedure as summed up in* SMS Tea Estates, *(2011) 14 SCC 66 shall not be available in proceedings under S. 8 of the 1996 Act where the party making such application does not express willingness to pay the deficit stamp duty and the penalty — It is not the duty of the court to adjourn the suit indefinitely until the defect as to deficit stamp duty is cured — No fault found in the order of the trial court in rejecting the application made under S. 8 — No case for interference under Art. 136 of the Constitution made out — Constitution of India, Art. 136 — Transfer of Property Act, 1882, S. 107 — Registration Act, 1908, S. 17 — Stamp Act, 1899, Ss. 35 and 38* (Paras 6 to 8). *Naina Thakkar* v. *Annapurna Builders*, (2013) 14 SCC 354: (2014) 2 SCC (Civ) 668.

Bench Strength **2**. Coram: *R.M. Lodha* and *Anil R. Dave*, JJ. [Date of decision: 13-7-2012]

SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66: (2012) 4 SCC (Civ) 777, distinguished on facts and explained

— Ss. 8, 11 and 5 — Reference to arbitration where agreement provides for arbitration — Interference of High Court under Art. 226 of Constitution — When proper *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Alternative remedy/Exhaustion of remedies, Art. 226, (2014) 1 SCC 329: (2014) 1 SCC (Civ) 422

[47] — Ss. 8, 11 and 23 — Quantification/particularisation of claims/counterclaims for referring disputes to arbitration — Extent to which, and Stage(s) at which may be done — Requirement of submitting specified claims for arbitration — Explained in detail. *Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

Inder Singh Rekhi v. DDA, (1988) 2 SCC 338; J&K State Forest Corpn. v. Abdul Karim Wani, (1989) 2 SCC 701, explained and distinguished

R.S. Bachawat: Law of Arbitration, First Edn., p. 354, cited

State of Goa v. Praveen Enterprises, (2012) 12 SCC 581, clarified and applied

McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; BSNL v. Motorola India (P) Ltd., (2009) 2 SCC 337: (2009) 1 SCC (Civ) 524; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306, distinguished

Rolta India Ltd. v. Voltas Ltd., (2013) 6 AIR Bom R 823; Rolta India Ltd. v. Voltas Ltd., Appeal (OS) No. 8 of 2013 in Arbitration Petition (Lodg) No. 1240 of 2012, decided on 16-8-2013 (Bom), modified

[48] — Ss. 8 and 45 — Reference to domestic arbitration under S. 8 and foreign-seated arbitration under S. 45 — Grounds on which may be declined, distinguished — Use of "shall" in S. 8 — Significance of. *Swiss Timing Ltd.* v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642: AIR 2014 SC 3723: (2014) 6 Mah LJ 662: (2015) 1 LW 101: (2014) 3 CTC 830: (2014) 4 MPLJ 527.

Bench Strength 1. Coram: **S.S. Nijjar**, J. [Date of decision: 28-5-2014]

— **S. 9** *See* S. 2(2)

See also CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — Interim/Interlocutory orders, Art. 136, (2011) 15 SCC 428: (2014) 2 SCC (Civ) 611

— **S. 10** *See* S. 45

— **S. 11** *See also* Ss. 4; 7; 8; 43; 45

[49] — S. 11 — Appointment of arbitrator — Maintainability of application — Locus standi/Standing — Joint development agreement entered into between *A*, President of *G* society and owner of land, and appellant as developer, and power of attorney executed in appellant's favour for development of land — Application filed by *G* society for appointment of arbitrator — *Contention by appellant that A had entered into agreement in his individual capacity as the owner, and hence, application filed by G society was not maintainable since it was not a party to the agreement — Held, A had neither executed the joint development agreement nor as power of attorney in his individual capacity, but the executant was the G society represented by its President A — Hence, application under S. 11 was maintainable as it was party to the joint development agreement* (Paras 8 to 10). *Khivraj Motors* v. *Guanellian Society*, (2011) 15 SCC 394: (2014) 2 SCC (Civ) 592: AIR 2011 SC 2826: (2012) 113 Cut LT 160.

Bench Strength 2. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-7-2011]

[50] — S. 11 — Appointment of arbitrator — UNCITRAL Model Law — Held, since S. 11 uses similar phraseology as Art. 11 of UNCITRAL Model Law, Court can rely on Model Laws or UNCITRAL Laws as legitimate aids in interpreting provisions of S. 11 (Para 69). *Reliance Industries Ltd.* v. *Union of India*, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163: AIR 2014 SC 2342.

Bench Strength 1. Coram: **S.S. Nijjar**, J. [Date of decision: 29-4-2014]

— **S. 11(1)** *See* S. 11(8)

[51] — Ss. 11(3), (4) & (6) — Appointment of Presiding Arbitrator — Jurisdiction of court — When attracted — Failure of procedure provided for, in agreement — *Arbitration agreement providing for appointment of three arbitrators, one arbitrator by each party, who in turn were to jointly appoint third arbitrator who shall act as Chairman of Arbitral Tribunal — Pursuant to said agreement two parties nominated one arbitrator each — However, the two arbitrators failed to reach consensus as to appointment of Presiding Arbitrator — Having jurisdiction over said matter, Supreme Court appointed Presiding Arbitrator — Terms and conditions with regard to remuneration and facilities left to be mutually decided by parties and members of Arbitral Tribunal — Appointment of Arbitrators by the Chief Justice of India Scheme, 1996*

The respondents and the petitioner have nominated one arbitrator each for resolution of the disputes. However, there was a dispute between the respondents and the petitioner as to the agreement under which they have appointed arbitrators. The petitioner contending that it had invoked arbitration under the share subscription agreement (SSA) while the respondent contended that it had invoked arbitration only under the share purchase agreement (SPA). Thereafter, the arbitrator appointed by the petitioner addressed the arbitrator appointed by the respondents and suggested the names of two persons, one of whom to be appointed as the Presiding Arbitrator. As the parties having failed to agree mutually on the appointment of the Presiding Arbitrator, the petitioner has approached the Supreme Court under Section 11 of the Arbitration and Conciliation Act.

Allowing the appeal,

Held :

Pursuant to the arbitration clause, both the parties have nominated one arbitrator each. The petitioner has appointed *P* and the respondents have nominated *M* as the arbitrator. Nomination of the arbitrators by the parties has indicated the fact that there is a live dispute between the parties. The Supreme Court has the necessary jurisdiction as the

petitioner is a company which is incorporated in Mauritius. The two arbitrators appointed by the parties have failed to reach a consensus with regard to the appointment of the Chairman of the Arbitral Tribunal. Therefore, in exercise of the powers under Section 11(6), the Hon'ble Mr Justice S.P. Bharucha, former Chief Justice of India is appointed as the Chairman of the Arbitral Tribunal. (Para 12). *India Industrial Growth Fund Ltd.* v. *Nesanuru Doraswamy*, (2011) 15 SCC 408: (2014) 2 SCC (Civ) 600.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 9-5-2011]

— **S. 11(4)** *See* S. 11(3)

[52] — Ss. 11(5), (6) and 16(1) — Arbitrable dispute — If existed — Issuance of full and final discharge/settlement voucher/no-dues certificate, etc., reiterated, does not preclude arbitration when said full and final settlement itself is disputed — *On facts, whether letter would constitute "full and final settlement", was to be determined on appreciation of evidence since it is open to two interpretations — Thus, held, issue was subject to arbitration — Hence reference to arbitration maintainable. Gayatri Project Ltd.* v. *Sai Krishna Construction*, (2014) 13 SCC 638: (2014) 5 SCC (Civ) 739.

Bench Strength **2**. Coram: *S.S. Nijjar* and *Ranjana P. Desai*, JJ. [Date of decision: 28-11-2013]

National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267: (2009) 1 SCC (Civ) 117, applied

Sai Krishna Constructions v. Gayathri Projects Ltd., Arbitration Application No. 55 of 2006, order dated 20-12-2006 (AP), affirmed

Nathani Steels Ltd. v. Associated Constructions, 1995 Supp (3) SCC 324, explained and distinguished

— **S. 11(6)** *See also* Ss. 4; 7; 11(3); 11(5); 11(8)

[53] — S. 11(6) — Appointment of arbitrator by Chief Justice/Designate — Arbitral Tribunal appointed by one party unilaterally under ICC Rules despite agreement stipulating that ICC Rules or UNCITRAL Rules would apply only after constitution of Arbitral Tribunal — Invocation of power of court to constitute Arbitral Tribunal by other party (petitioner herein) — Maintainability — *As question as to interference with Arbitral Tribunal constituted under ICC Rules, by Chief Justice or his designate by appointing another Arbitral Tribunal would have far-reaching consequences with regard to scope and ambit of powers of Chief Justice or his designate, and powers of Chief Justice or his designate to grant interim directions in such situation, matter referred to larger Bench* (Paras 28 to 35). *Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, (2014) 11 SCC 574: (2014) 4 SCC (Civ) 161.

Bench Strength **1**. Coram: *S.S. Nijjar*, J. [Date of decision: 16-11-2011]

[54] — Ss. 11(6) and 7 — Live dispute, existence of — When implied — Held, appointment of respective arbitrators by each party, implies that there is live dispute between parties

The respondents and the petitioner have nominated one arbitrator each for resolution of the disputes. However, there was a dispute between the respondents and the petitioner as to the agreement under which they have appointed arbitrators. The petitioner contending that it had invoked arbitration under the share subscription agreement (SSA) while the respondent contended that it had invoked arbitration only under the share purchase agreement (SPA). Thereafter, the arbitrator appointed by the petitioner addressed the arbitrator appointed by the respondents and suggested the names of two persons, one of whom to be appointed as the Presiding Arbitrator. As the parties having failed to agree mutually on the appointment of the Presiding Arbitrator, the petitioner has approached the Supreme Court under Section 11 of the Arbitration and Conciliation Act.

Allowing the appeal,

Held :

Pursuant to the arbitration clause, both the parties have nominated one arbitrator each. The petitioner has appointed *P* and the respondents have nominated *M* as the arbitrator. Nomination of the arbitrators by the parties has indicated the fact that there is a live dispute between the parties. The Supreme Court has the necessary jurisdiction as the petitioner is a company which is incorporated in Mauritius. The two arbitrators appointed by the parties have failed to reach a consensus with regard to the appointment of the Chairman of the Arbitral Tribunal. Therefore, in exercise of the powers under Section 11(6), the Hon'ble Mr Justice S.P. Bharucha, former Chief Justice of India is appointed as the Chairman of the Arbitral Tribunal. (Para 12). *India Industrial Growth Fund Ltd.* v. *Nesanuru Doraswamy*, (2011) 15 SCC 408: (2014) 2 SCC (Civ) 600.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 9-5-2011]

[55] — Ss. 11(6) & (8) and 14(1) & 15(2) — Appointment of arbitrator by Court in supersession of arbitrators already appointed as per agreement procedure — When warranted — Inordinate delay in completion of arbitration proceedings by such arbitrators and passing of

award — Termination of mandate of such arbitrators by Court for failure/impossibility to act — Forfeiture of right of party to appoint arbitrator/substitute arbitrator under agreement procedure — When obtains — Power of court to depart/deviate from agreement procedure for appointment of arbitrators — Exercise of — *Held, where procedure and process under the 1996 Act is rendered futile, Court is empowered to depart from agreed terms of appointment of arbitrators, terminate mandate of arbitrators already appointed and appoint a fresh arbitrator in compliance with Ss. 11(6) & (8) of the 1996 Act — Appointment of retired Judge as arbitrator by High Court in view of delay of about two decades in finalising arbitration proceedings by arbitrators appointed by appellant Department, contested on ground that said appointment by High Court was contrary to qualifications of arbitrators prescribed in agreement [Cls. 64(3)(a)(ii) and (iii) of General Conditions of Contract] — Tenability — Held, said clauses do not prescribe any specific qualification of arbitrators that are to be appointed under the agreement except that they should be Railway Officers — Further held, even if agreement specifically provides for any particular qualification of an arbitrator, in appropriate case, Court is not powerless to appoint arbitrator under S. 11(6) of the 1996 Act — In instant case, even after nearly two decades have elapsed since contractor raised his claims for alleged wrongful termination of two contracts, award in one contract in respect of disputes and differences is yet to be passed and in another contract arbitration proceedings have not even commenced — Deprecating the situation, held, Court can deviate from procedure agreed by parties and exercise power under S. 11(6) to facilitate mechanism contemplated and effectuate remedy provided under statute — Thus, held, there is no infirmity warranting interference in appointment of arbitrator by High Court* (Para 10). *North Eastern Railway* v. *Tripple Engg. Works*, (2014) 9 SCC 288: (2014) 5 SCC (Civ) 30: AIR 2014 SC 3506: (2015) 108 ALR 231: (2015) 1 Mah LJ 548: (2014) 143 AIC 129.

Bench Strength **2**. Coram: **Ranjan Gogoi** and *M.Yusuf Eqbal*, JJ. [Date of decision: 13-8-2014]

Union of India v. Singh Builders Syndicate, (2009) 4 SCC 523: (2009) 2 SCC (Civ) 246; Deep Trading Co. v. Indian Oil Corpn., (2013) 4 SCC 35: (2013) 2 SCC (Civ) 449, applied

Union of India v. Bharat Battery Mfg. Co. (P) Ltd., (2007) 7 SCC 684; Punj Lloyd Ltd. v. Petronet MHB Ltd., (2006) 2 SCC 638; Northern Railway Admn. v. Patel Engg. Co. Ltd., (2008) 10 SCC 240; Indian Oil Corpn. Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520: (2009) 3 SCC (Civ) 460; Datar Switchgears Ltd. v. Tata Finance Ltd., (2000) 8 SCC 151, followed

Tripple Engg. Works v. North Eastern Railway, Request Case No. 3 of 2012, order dated 27-6-2012 (Pat), affirmed

[56] — Ss. 11(6) and 16 — Appointment of arbitrator — Preliminary matters that may be decided by Chief Justice or designate — Arbitrability of a claim/dispute — Claim raised by one of the parties if falls under matters excepted from scope of arbitration agreement — Determination of, by Chief Justice or designate on merits — Permissibility — Held, while dealing with application under S. 11(6), Chief Justice/designate would not be justified in deciding whether a claim falls under excepted matter or not under the arbitration agreement — Decision as to such issues, held, to be left to arbitrator — Such issue falls within "third category" of issues that may come up before Chief Justice/designate, as classified in para 22 of *Boghara Polyfab*, (2009) 1 SCC 267, which category of issues must be left exclusively to be determined by arbitrator — *Application for referring disputes between parties to arbitration objected to on ground that disputes concerned fell under excepted matters and were liable to be referred to an expert for resolution as per agreement but not to an arbitrator — Chief Justice considering various terms in agreement, on merits decided that said disputes do not fall under excepted matters and appointed arbitrator — Sustainability — Held, Chief Justice or designate may not examine issue of "arbitrability" of a dispute — Once Chief Justice/ designate finds valid arbitration agreement between parties, issue of arbitrability of disputes must be left for decision of arbitrator — Thus, held, in instant case designate Judge erred in deciding said issue on merits instead of leaving it to decision of arbitrator — Hence, while retaining order of appointment of arbitrator, order of Chief Justice on excepted matters, set aside. Arasmeta Captive Power Co. (P) Ltd.* v. *Lafarge India (P) Ltd.*, (2013) 15 SCC 414: (2014) 5 SCC (Civ) 302: AIR 2014 SC 525: (2014) 182 Comp Cas 115: (2014) 1 CTC 415: (2014) 2 KLT 1053: (2014) 102 ALR 680: (2014) 134 AIC 213.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 12-12-2013]

Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213; Quinn v. Leathem, 1901 AC 495 (HL); Krishena Kumar v. Union of India, (1990) 4 SCC 207: 1991 SCC (L&S) 112: (1990) 14 ATC 846; Caledonian Railway Co. v. Walker's Trustees, (1882) LR 7 AC 259: (1881-85) All ER Rep 592: 46 LT 826 (HL); State of A.P. v. A.P. Jaiswal, (2001) 1 SCC 748: 2001 SCC (L&S) 316; State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275: 2006 SCC (L&S) 122; Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697; Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1; Union of India v. Amrit Lal Manchanda, (2004) 3 SCC 75: 2004 SCC (Cri) 662; Som Mittal v. State of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910; Booz Allen and

Hamilton Inc. v. SBI Home Finance Ltd., (2011) 5 SCC 532: (2011) 2 SCC (Civ) 781; SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618, followed

SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618; National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267: (2009) 1 SCC (Civ) 117; Shree Ram Mills Ltd. v. Utility Premises (P) Ltd., (2007) 4 SCC 599; Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641: (2013) 1 SCC (Civ) 689, explained and followed

Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388, held, overruled

Lafarge India (P) Ltd. v. Arasmeta Captive Power Co. (P) Ltd., Arbitration Application No. 24 of 2012, order dated 22-7-2013 (Chh), partly reversed

[57] — Ss. 11(6), 19, 13, 16 and 34 — Whether the pre-emptive unilateral invocation of jurisdiction of ICC while reference to Senior Management Teams from both companies/parties was in progress, barred the Chief Justice from appointing an arbitrator under S. 11(6) — Effect of Art. 19 of the agreement providing that rights and responsibilities would be subject to and construed in accordance with laws of India and seat of arbitration was to be in India (New Delhi) — *One party unilaterally invoking jurisdiction of ICC purportedly under the arbitration agreement for appointment of arbitrator — Other party, if can proceed under S. 11(6) on the ground that arbitration agreement provided for reference to Senior Managements for resolution, only failing which, reference for arbitration to be made to an Arbitral Tribunal of three members with juridical seat at New Delhi and procedure to be followed by Arbitral Tribunal was to be procedure of ICC or UNCITRAL — Held, there is a clear distinction between the governing law of the agreement and law to govern the arbitration proceedings — Hence, in the facts and circumstances of the case, since the arbitrator had already been appointed by ICC, the provisions of S. 11(6) of the 1996 Act could not be invoked to challenge it by appointment of another arbitrator — Proper remedy would be by way of petition under S. 13 of 1996 Act before the arbitrator already appointed, and thereafter under S. 34 of 1996 Act — That parties agreed for procedure to be followed by Arbitral Tribunal as per ICC Rules construed as enabling appointment of arbitrator under ICC Rules* (Paras 28 to 35). *Antrix Corpn. Ltd.* v. *Devas Multimedia (P) Ltd.*, (2014) 11 SCC 560: (2014) 4 SCC (Civ) 147: (2013) 3 CTC 674: (2013) 99 ALR 507: (2013) 127 AIC 229: (2013) 5 LW 565.

Bench Strength **2**. Coram: **Altamas Kabir, C.J.** and *S.S. Nijjar*, J. [Date of decision: 10-5-2013]

Som Datt Builders (P) Ltd. v. State of Punjab, AIR 2006 P&H 124: (2006) 3 RAJ 144, approved

Dicey: Conflict of Laws, cited

[**Ed.**: It is humbly submitted that the ruling herein is per incuriam the law settled by at least *seven* two-Judge Bench decisions on the exercise of power under Section 11 of the Arbitration and Conciliation Act, 1996, in *National Highways Authority of India* v. *Bumihiway DDB Ltd.*, (2006) 10 SCC 763; *Union of India* v. *V.S. Engg. (P) Ltd.*, (2006) 13 SCC 240; *Municipal Corpn., Jabalpur* v. *Rajesh Construction Co.*, (2007) 5 SCC 344; *Northern Railway Admn.* v. *Patel Engg. Co. Ltd.*, (2008) 10 SCC 240; *Indian Oil Corpn. Ltd.* v. *Raja Transport (P) Ltd.*, (2009) 8 SCC 520: (2009) 3 SCC (Civ) 460; *Union of India* v. *Premier Files Ltd.*, (2009) 9 SCC 384: (2009) 3 SCC (Civ) 763; *Deep Trading Co.* v. *Indian Oil Corpn.*, (2013) 4 SCC 35: (2013) 2 SCC (Civ) 449. *See also* the rulings by Single Judges of the Supreme Court in *You One Engg. & Construction Co. Ltd.* v. *National Highways Authority of India*, (2006) 4 SCC 372; *India Household and Healthcare Ltd.* v. *LG Household and Healthcare Ltd.*, (2007) 5 SCC 510; and *You One Maharia* v. *National Highways Authority of India*, (2007) 7 SCC 704, which lay down exactly the same proposition of law as the seven two Judge Bench decisions mentioned above.

Furthermore, it is humbly submitted that this judgment confuses the clear distinction between the proper law of the arbitration agreement (lex arbitri) i.e. by which the arbitrator is to be appointed, and the procedure to be followed by the arbitrator in deciding the arbitral reference (lex fori), which is *not* the proper law of the arbitration agreement (*see* for instance Section 19 of the Arbitration and Conciliation Act, 1996).

The law on the issue of exercise of power under Section 11 of the Arbitration and Conciliation Act, 1996, which is well-settled on this point, by at least the seven abovementioned two-Judge Bench decisions, is that the appointment procedure provided for in the arbitration agreement must be fully complied with, and it is only upon failure of the agreement appointment procedure that the Chief Justice acquires jurisdiction to appoint an arbitrator under Section 11(6) of the 1996 Act. Till then, if the Chief Justice has no power to override the agreement appointment procedure, it is hard to see how one of the parties can be permitted to do so unilaterally, as has been permitted and vindicated by the ruling in the present judgment.

In the present case, the agreement appointment procedure (*see* para 3 of the judgment) was that the parties would first seek to resolve their disputes through their Senior Managements (the parties were still at this stage when the respondent unilaterally invoked the jurisdiction of ICC for appointment of an arbitrator), upon failure of which, reference to arbitration was to be made to an Arbitral Tribunal of three members with their seat at New Delhi. The procedure to be followed by such Arbitral Tribunal, once appointed, was to be either the ICC or UNCITRAL procedure. Nowhere does the agreement appointment procedure envisage the appointment of the arbitrator/Arbitral Tribunal by the ICC, upon unilateral invocation of ICC's jurisdiction by one of the parties, as has been done by the respondent. ICC was given no

jurisdiction at all in this regard by the arbitration agreement. Rather, it is the Chief Justice under Section 11(6) of the 1996 Act who would have any such jurisdiction, and that too after failure of the agreement appointment procedure. Hence, it is humbly submitted that it was certainly open to the Court herein, under Section 11(6) of the 1996 Act, as interpreted in the abovementioned seven two-Judge Bench decisions, to set aside the illegal appointment of the arbitrator by ICC, which had no jurisdiction to do so, and either relegate the parties to comply with the agreement appointment procedure, or upon a finding that the same had failed, itself appoint an arbitrator under Section 11(6) of the 1996 Act.]

[58] — S. 11(6) and S. 34(2)(a)(v) Cl. 2900(c) of Indian Railways Standard (IRS) conditions — Appointment of arbitrator by Court, despite the same being prohibited by agreement between parties — Validity — *rbitration clause [said Cl. 2900(c) of IRS conditions] providing that no person other than person appointed by the appointing authority specified in contract to act as arbitrator and if that is not possible, the matter is not to be referred to arbitration at all — In view of peculiar facts and circumstances of instant case, held, matter is liable to be referred to independent arbitrator — However, held, such appointment by court cannot be precedent in other cases — Supreme Court appointed a retired Judge as arbitrator to resolve said disputes* (Para 1). *Union of India* v. *Concrete Products & Construction Co.*, (2014) 4 SCC 426: (2014) 2 SCC (Civ) 569.

Bench Strength 3. Coram: *R.C. Lahoti, C.J.* and *Dr AR. Lakshmanan* and *G.P. Mathur*, JJ. [Date of decision: 2-5-2005]

Union of India v. Concrete Products & Construction Co., SLPs (C) Nos. 18244-45 of 2004, order dated 11-4-2005 (SC), clarified

Union of India v. Concrete Products and Construction Co., Writ Appeal No. 2822 of 2001, decided on 30-4-2004 (Mad), reversed

[**Ed.**: Clause 2900(*c*) of the IRS conditions reads as follows:

"(*c*) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all."]

— S. 11(8) *See also* Ss. 7; 11(6)

[59] — Ss. 11(8), (1), (6) & (9), 2(1)(f), 12(3)(a) & (b) — Power of Chief Justice to appoint independent and impartial arbitrator — Mandate of Ss. 11(8)(b) & (9) — Power to appoint arbitrator not named as per agreement procedure/either party to secure mandate of independence and impartiality of arbitrator — International commercial arbitration — Nationality of arbitrator — Appointment of foreign national as arbitrator — Onus on Chief Justice/designate to appoint neutral, impartial and independent arbitrator — Guiding factors — Pragmatic approach in appointment of arbitrators in international commercial arbitrations, stressed — No provision in arbitration agreement with juridical seat in India, for appointment of foreign national as arbitrator/third arbitrator — Relevance — *Further held, merely because seat of arbitration is in India and applicable law is Indian law, it does not become incumbent on Court to appoint an Indian national as third arbitrator — Concern of Court is to ensure neutrality, impartiality and independence of third arbitrator — Choice of parties has little to do with choice of Chief Justice of India or his nominee in appointing third arbitrator — Since, in international arbitration, surest method of ensuring neutrality would be to appoint sole or third arbitrator from nationality other than parties to arbitration, in instant case, Chief Justice/nominee appointed third arbitrator not in the list of names suggested by either party — Since arbitrators appointed by parties to dispute had failed to arrive at a consensus as to third arbitrator, petitioner approached Chief Justice of India/Designate for appointment of person of any nationality other than from India — In present case,* firstly, *Art. 33.6 of PSC did not impose any embargo on nationality of third arbitrator — Thus, even if third arbitrator is an Indian national, it would not be contrary to arbitration agreement (Art. 33.6 of PSC) — However, plea of respondent that only an Indian national can be appointed, in absence of requirement of appointing foreign national as third arbitrator in arbitration agreement, is untenable —* Secondly, *S. 11(9) specifically empowers CJI/Designate to appoint arbitrator of a nationality other than the nationality of parties involved in litigation — In appointing arbitrators in international arbitrations, Chief Justice/Designate is guided by provisions of A&C Act, 1996 and generally accepted practices in other international jurisdictions to ensure neutrality, impartiality and independence of Arbitral Tribunal — In instant case, Art. 33.6 entrusts Chief Justice with power to appoint third arbitrator who would be neutral, impartial and independent and there is no agreement between the parties that third arbitrator must necessarily be an Indian national — Since, in international arbitration, surest method of ensuring neutrality would be to appoint sole or third arbitrator from nationality other than parties to arbitration, Chief Justice/Designate appointed third arbitrator not from list of names suggested by either party. Reliance Industries Ltd.* v. *Union of*

India, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163: AIR 2014 SC 2342.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 29-4-2014]

Redfern and Hunter on International Arbitration, Vth Edn. (2009), Para 4.59; Gary B. Born: International Commercial Arbitration, Vol. 1 (2009), relied on

Malaysian Airlines Systems BHD (II) v. Stic Travels (P) Ltd., (2001) 1 SCC 509; MSA Nederland B.V. v. Larsen & Toubro Ltd., (2005) 13 SCC 719, clarified

Northern Railway Admn., Ministry of Railway v. Patel Engg. Co. Ltd., (2008) 10 SCC 240, applied

[**Ed.**: Also see paras 86 to 92 for supplementary orders.]

[60] — Ss. 11(8), (9), & (1) & (6) and 2(1)(f) — Nationality of arbitrator in international arbitration — Discretion of Chief Justice/nominee — Appointment of third arbitrator of a nationality other than the nationality of parties — Pragmatic approach — *Held, concern of the Court is to ensure* neutrality, impartiality *and* independence *of the third arbitrator — Choice of the parties has little, if anything, to do with the choice of the Chief Justice of India or his nominee in appointing the third arbitrator — It is true that even at the stage of exercising its jurisdiction under S. 11(6) at the final stage, the Chief Justice of India or his nominee can informally enquire about the preference of the parties — But it is entirely up to the Chief Justice of India, whether to accept any of the preferences or to appoint the third arbitrator not mentioned by any of the parties — In making such a choice, the Chief Justice of India will be guided by the relevant provisions contained in the Arbitration Act, the UNCITRAL Model Laws and the UNCITRAL Rules, where the parties have included the applicability of the UNCITRAL Model Laws/UNCITRAL Rules by choice. Reliance Industries Ltd.* v. *Union of India*, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163: AIR 2014 SC 2342.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 29-4-2014]

Redfern and Hunter on International Arbitration, Vth Edn. (2009), Para 4.59; Gary B. Born: International Commercial Arbitration, Vol. 1 (2009), relied on

Malaysian Airlines Systems BHD (II) v. Stic Travels (P) Ltd., (2001) 1 SCC 509; MSA Nederland B.V. v. Larsen & Toubro Ltd., (2005) 13 SCC 719, clarified

Northern Railway Admn., Ministry of Railway v. Patel Engg. Co. Ltd., (2008) 10 SCC 240, applied

[**Ed.**: Also see paras 86 to 92 for supplementary orders.]

— **S. 11(9)** *See* S. 11(8)
— **S. 12** *See* S. 4
— **Ss. 12(3)(a) & (b)** *See* S. 11(8)
— **S. 13** *See* Ss. 4; 11(6)
— **S. 14(1)** *See* S. 11(6)

[61] — Ss. 14(2), 5, 2(1)(e) and 32(2)(c) — Termination of mandate of Arbitral Tribunal — Validity of — Proper forum to determine — Invocation of Art. 226 of Constitution against order passed by Arbitral Tribunal — Not maintainable — Legality of termination of mandate of Arbitral Tribunal, held, is to be decided by court under provisions of 1996 Act, and not under Art. 226 of Constitution by way of writ proceedings — *Arbitral Tribunal terminated proceedings on ground that claimant took no interest in the matter despite many adjournments — Aggrieved by said termination of arbitration, appellant claimant filed application invoking S. 11 for appointment of arbitrator to adjudicate dispute — High Court dismissing said petition opining that remedy lies in filing writ petition but not application under S. 11 — Tenability — Held, S. 32 deals with termination of arbitral proceedings while mandate of arbitrator can be terminated and legality of such termination is to be decided by court under S. 14(2) — In instant case, arbitration proceedings were terminated on ground that continuation of proceedings had become impossible — Since arbitration proceedings were terminated, mandate of Arbitral Tribunal also terminated — Hence, on cumulative reading of Ss. 14 and 32, held, question whether mandate of Arbitral Tribunal was legally terminated or not is to be examined only by court under 1996 Act — Appeal dismissed with liberty to appellant to approach appropriate court to determine legality of termination of mandate of Arbitral Tribunal* (Paras 8 and 10 to 14). *Lalitkumar V. Sanghavi* v. *Dharamdas V. Sanghavi*, (2014) 7 SCC 255: (2014) 3 SCC (Civ) 688: (2015) 1 Mah LJ 1: (2014) 104 ALR 276: (2015) 1 MPLJ 70: (2014) 136 AIC 117.

Bench Strength **3**. Coram: *Dr B.S. Chauhan*, **Jasti Chelameswar** and *M. Yusuf Eqbal*, JJ. [Date of decision: 4-3-2014]

SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618, followed

Lalitkumar V. Sanghavi v. Dharamdas V. Sanghavi, Arbitration Application No. 44 of 2008, order dated 24-9-2010 (Bom), reversed

— **S. 15** *See* Ss. 2(1)(e); 34
— **S. 15(2)** *See* S. 11(6)
— **S. 16** *See* Ss. 2(1)(b); 4; 7; 8; 11(6); 34; 45
— **S. 16(1)** *See* S. 11(5)
— **S. 19** *See* S. 11(6)
— **S. 20** *See* Ss. 2(1)(e); 2(2)
— **S. 21** *See* S. 43
— **S. 23** *See* Ss. 8; 43
— **S. 24** *See* S. 34
— **S. 25(c)** *See* S. 27

[62] — S. 27 — Nature and scope of — Term "any person" — S. 27 being an enabling provi-

sion, term "any person" in S. 27(2)(c) is wide enough to cover not only witnesses, but also parties to the proceeding — Further held, S. 27 is not similar to S. 43 of 1940 Act — *Arbitration Act, 1940, S. 43 — Words and Phrases — "Any person" and "parties and witnesses". Delta Distilleries Ltd.* v. *United Spirits Ltd.*, (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10: AIR 2014 SC 113: (2013) 6 CTC 406: (2014) 68 VST 153: (2013) 5 LW 405.

Bench Strength **2**. Coram: *A.K. Patnaik* and **H.L. Gokhale**, JJ. [Date of decision: 23-9-2013]

United Spirits Ltd. v. Delta Distilleries Ltd., (2012) 5 Bom LR 2848, affirmed

Union of India v. Bhatia Tanning Industries, AIR 1986 Del 195, clarified

— S. 27 — Direction to produce confidential documents to decide disputes on merits — Permissibility *See* SALES TAX AND VAT — 'Maharashtra Value Added Tax Act, 2002 (9 of 2005)', S. 71 and S. 64, Bombay Sales Tax Act, 1959 (51 of 1959), (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

[63] — Ss. 27 and 25(c) — Court's assistance in taking evidence — Resort to, by Arbitral Tribunal when called for instead of proceeding ex parte — *Held, Arbitral Tribunal is entitled to seek assistance from court if any person is not cooperating or where evidence is required from any person, be it a party to proceedings or others in order to make award on merits — In instant case, appellant had refused to produce sales tax assessment orders while respondent made claims for set-off/adjustment of refund of sales tax on a theoretical basis, Arbitral Tribunal permitted respondent to move court for assistance in direction for production of said documents — Single Judge of High Court allowing said application directing appellant to produce said documents — Sustainability — Contention that Arbitral Tribunal could have made award ex parte by drawing adverse inference if documents were not produced — Tenability — Held, though Arbitral Tribunal can proceed ex parte if a party fails to appear before it, instead of depending on hypothetical calculations, it can resort to taking assistance of court in obtaining evidence, in this case the actual sales tax assessment orders to decide dispute on merits as to whether quantum of set-off allowed and claimed by parties is justified or not — CPC, 1908, Or. 11 R. 21 — Evidence Act, 1872, S. 114 Ill. (g). Delta Distilleries Ltd.* v. *United Spirits Ltd.*, (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10: AIR 2014 SC 113: (2013) 6 CTC 406: (2014) 68 VST 153: (2013) 5 LW 405.

Bench Strength **2**. Coram: *A.K. Patnaik* and **H.L. Gokhale**, JJ. [Date of decision: 23-9-2013]

United Spirits Ltd. v. Delta Distilleries Ltd., (2012) 5 Bom LR 2848, affirmed

Union of India v. Bhatia Tanning Industries, AIR 1986 Del 195, clarified

— S. 28(3) *See* S. 31(7)(a)

[64] — S. 31(3) — Requirement of speaking award — Object explained — *Held, enactment seeks to achieve twin objectives of obliging Arbitral Tribunal to give reasons for its award and reducing supervisory role of courts in arbitration proceedings. Anand Bros. (P) Ltd.* v. *Union of India*, (2014) 9 SCC 212: (2014) 2 SCC (L&S) 761: (2014) 5 SCC (Cri) 5: (2014) 4 SCC (Civ) 777: AIR 2015 SC 125: (2014) 107 ALR 903: (2014) 143 AIC 229.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

Ram Kishna Ram Nath v. Janpad Sabha, AIR 1962 SC 1073; Ghanshyam Dass v. Dominion of India, (1984) 3 SCC 46; Yogendra Nath Naskar v. CIT, (1969) 1 SCC 555, relied on

— S. 31(3) — Speaking award *See* 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— S. 31(7) *See also* S. 34

[65] — Ss. 31(7)(a) & (b), 28(3) and 34 — Interest — Grant of, for pre-arbitration period — Permissibility — Interest on amounts already deposited in court — *Held, arbitrator, contrary to terms of agreement, is not empowered to grant interest for pre-arbitration period — Further held, no interest is payable on amounts deposited in court — CPC, 1908, Ss. 34, 47 and Or. 21* (Paras 19 and 21). *Union of India* v. *Concrete Products & Construction Co.*, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551: AIR 2014 SC 1914: (2014) 5 Mah LJ 87: (2014) 3 MPLJ 481: (2014) 104 ALR 280: (2014) 136 AIC 108: (2014) 2 Cal LJ 50.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 3-3-2014]

Concrete Products and Construction Co. v. Union of India, Application No. 780 of 2011 in Original Petition No. 142 of 2007, order dated 24-2-2011 (Mad), affirmed

Union of India v. Concrete Products and Construction Co., Original Side Appeal No. 44 of 2012, decided on 21-3-2012 (Mad), reversed

— S. 31(7)(b) *See* S. 31(7)(a)

— S. 32(2)(c) *See* S. 14(2)

— S. 34 *See* Ss. 2(1)(e); 4; 11(6); 31(7)(a)

See also 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c) and 17, (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

[66] — S. 34 — Arbitration award — Interference — When permissible — Error of law — *Held, court can interfere when arbitrator makes an incorrect and inapposite appreciation/application of proposition of law* (Para 32). *Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

[67] — S. 34 — Jurisdiction of arbitrator — Limits to — Award in excess of jurisdiction — Arbitrator awarding higher rate than rate agreed in contract — Held, beyond his competency and authority — *Arbitrator is not empowered to rewrite terms of contract and award contractor a higher rate for the work for which rate was already fixed in contract*

Dismissing the appeal,

Held :

As per the contract, the contractor was to be paid for cutting the earth and sectioning to profile, etc. @ Rs 110 per cubic metre. However, the arbitrator awarded the a rate of Rs 210 per cubic metre. There may be some merit in the contention that the contractor was required to spend a huge amount on the rock blasting work but once the rate had been fixed in the contract for a particular work, the contractor was not entitled to claim additional amount merely because he had to spend more for carrying out such work. The whole exercise undertaken by the arbitrator in determining the rate for the work at Serial No. 3 of Schedule A was beyond his competence and authority. It was not open to the arbitrator to rewrite the terms of the contract and award the contractor a higher rate for the work for which rate was already fixed in the contract. The arbitrator having exceeded his authority and power, the High Court cannot be said to have committed any error in upsetting the award passed by the arbitrator with regard to Claim 4. Thus, the High Court did not commit any error in upsetting the award of the arbitrator with regard to Claim 4 in the statement of claim. (Paras 11 and 12). *Satyanarayana Construction Co.* v. *Union of India*, (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252.

Bench Strength **2**. Coram: *R.M. Lodha* and *J.S. Khehar*, JJ. [Date of decision: 12-10-2011]

Union of India v. Satyanarayana Construction Co., (2005) 3 An LT 460: (2005) 2 Arb LR 496 (AP), affirmed

[68] — Ss. 34 & 2(1)(e) and S. 15 CPC — Challenge to award — Filing of, before lowest court — Principle that suits shall be filed before the lowest court enshrined in S. 15 of CPC, held, not applicable to challenge of arbitral awards — *CPC, 1908, Ss. 15 and 20. State of Maharashtra* v. *Atlanta Ltd.*, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206: AIR 2014 SC 1093: (2014) 3 LW 81.

Bench Strength **2**. Coram: *A.K. Patnaik* and **J.S. Khehar**, JJ. [Date of decision: 16-1-2014]

[69] — Ss. 34 and 16 — Adjudication by arbitrator — Must, inter alia, conform to principle of *Wednesbury* reasonableness

No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of the *Wednesbury* principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available. (Para 39)

It is neither necessary nor proper to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified depending upon whether the offending part is or is not severable from the rest. (Para 40). *ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12: AIR 2015 SC 363: (2014) 107 ALR 333: (2014) 143 AIC 237.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA), approved

[70] — Ss. 34 and 24 — Arbitral award — Effect of arbitration award in criminal proceedings arising out of the same contract — Held, findings of Arbitral Tribunal in its award are not binding in criminal proceedings — *Evidence Act, 1872, Ss. 40 to 43. Swiss Timing Ltd.* v. *Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642: AIR 2014 SC 3723: (2014) 6 Mah LJ 662: (2015) 1 LW 101: (2014) 3 CTC 830: (2014) 4 MPLJ 527.

Bench Strength **1**. Coram: **S.S. Nijjar**, J. [Date of decision: 28-5-2014]

N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72: (2010) 1 SCC (Civ) 12, whether per incuriam in light of provisions of Arbitration and Conciliation Act, 1996, and Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503 & P. Anand Gajapathi Raju v. P.V.G. Raju, (2000) 4 SCC 539

M.S. Sheriff v. State of Madras, AIR 1954 SC 397: 1954 Cri LJ 1019; Guru Granth Saheb Sthan Meerghat, Vanaras v. Ved

Prakash, (2013) 7 SCC 622: (2013) 3 SCC (Civ) 644: (2013) 3 SCC (Cri) 615, explained and followed

India Household and Healthcare Ltd. v. LG Household and Healthcare Ltd., (2007) 5 SCC 510, distinguished on facts

Spelling and Lewis: A Treatise on Law Governing Injunctions, referred to

[**Ed.**: See also *Booz Allen and Hamilton Inc.* v. *SBI Home Finance Ltd.*, (2011) 5 SCC 532, at para 36: "The well-recognised examples of *non-arbitrable disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences...* ." (emphasis supplied)]

[71] — Ss. 34, 31(7), 37(1)(b) & (2) — Application to set aside award passed in favour of small scale industrial undertaking — Requirement of pre-deposit of 75% of award amount under S. 7 of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, held, applicable for hearing of S. 34 application — *Applying* Snehadeep Structures, *(2010) 3 SCC 34, held, term "award" in S. 7 of Interest Act, 1993, would include an application under S. 34 of Arbitration and Conciliation Act, 1996 — Furthermore, as far as S. 36 of 1996 act is concerned, even though provisions of 1996 Act having not come into force when award was passed, one need not refer back to 1940 act because of S. 2(4) of 1996 Act — Impugned judgment of High Court set aside — Delayed Payments (Interest on) to Small Scale and Ancillary Industrial Undertakings Act, 1993, S. 7. Sri Paravathi Parmeshwar Cables* v. *A.P. Transmission Corpn. Ltd.*, (2013) 10 SCC 693: (2014) 1 SCC (Civ) 106.

Bench Strength **3**. Coram: *Altamas Kabir, C.J.* and *S.S. Nijjar* and *J. Chelameswar*, JJ. [Date of decision: 6-12-2012]

Snehadeep Structures (P) Ltd. v. Maharashtra Small-Scale Industries Development Corpn. Ltd., (2010) 3 SCC 34: (2010) 1 SCC (Civ) 603, affirmed and applied

Sri Paravathi Parmeshwara Cables v. A.P. Transmission Corpn. Ltd., (2006) 3 AP LJ 186, reversed

[72] — S. 34(2)(b)(ii) — Public policy of India — Award not in compliance with fundamental policy of Indian law as arbitrators failed to draw an inference that ought to have been drawn/inference drawn was untenable on the face of it — *In contract for upgradation and modernisation of vessel by fixing hydrophones, failure of respondent to complete contract in time caused delay in release of vessel leading to levy of excess engagement charges — Arbitral Tribunal deducted period of 4 months 22 days between 1-11-2001 and 22-3-2002 from total period of delay caused by respondent in handing over of vessel to appellant holding that appellant itself is responsible for the delay — On facts, if sustainable — Supreme Court divided said period into 4 separate intervals and found that Arbitral Tribunal rightly held that appellant was responsible for delay for the first period from 1-11-2001 and 26-11-2001 since it delayed taking final decision whether to make application to US authorities for issue of licence for hydrophones — However, Supreme Court found fault with Arbitral Tribunal for not applying the same test adopted for holding appellant responsible to the case of respondent for its failure to take action in right earnest to make application to US authorities for second period of 42 days from 27-11-2001 to 7-1-2002 — Hence held, Arbitral Tribunal fell in error leading to miscarriage of justice — Further, respondent also delayed in conveying rejection of application by US authorities for 14 days from 8-3-2002 and 22-3-2002 (fourth period) and Arbitral Tribunal did not give any valid reason for not counting said period — Hence, held, delay for said periods (42 days + 14 days) can be attributed to respondent and is liable to be deducted from the period of delay of 4 months 22 days attributed to appellant — Award modified as such — Contract Act, 1872, Ss. 53 to 55. ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12: AIR 2015 SC 363: (2014) 107 ALR 333: (2014) 143 AIC 237.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, applied

R. v. Electricity Commissioners, ex p London Electricity Joint Committee Co. (1920) Ltd., (1924) 1 KB 171: 1923 All ER Rep 150 (CA), held, approved

Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA), approved

ONGC Ltd. v. Western Geco International Ltd., Appeal (OS) No. 24 of 2006 in Arbitration Petition No. 203 of 2005, order dated 10-2-2006 (Bom); ONGC Ltd. v. Western Geco International Ltd., 2005 SCC OnLine Bom 1412: (2006) 3 Bom CR 848, modified

— **S. 34(2)(a)(iv)** *See* S. 2(1)(b)

— **S. 34(2)(a)(v) Cl. 2900(c)** *See* S. 11(6)

— **S. 34(2)(b)(ii)** *See also* S. 44

[73] — S. 34(2)(b)(ii) — "Public policy of India" — "Fundamental policy of Indian law" as a ground to set aside arbitral award in *ONGC*, (2003) 5 SCC 705 — What is — Juristic principles to be strictly followed by arbitrators, laid down — *Held, expression "fundamental policy of Indian law" includes all such fundamental principles that provide basis for administration of justice and enforcement of law in India — Elaborating on expression "fundamental policy of Indian law", held, three distinct and fundamental (but non-exhaustive) juristic principles that are to be followed in every determination either by court or*

any authority including an arbitrator, that affects rights and obligations of parties or leads to any civil consequences are: (i) duty to adopt judicial approach, (ii) compliance with principles of natural justice, particularly, application of mind to the attendant facts and circumstances while taking a view one way or the other, (iii) that the decision is not perverse or so irrational that no reasonable person would have arrived at the same i.e. the Wednesbury *principle would be applicable — This would include the situations where in the facts of a case, the case is proved and the arbitrators failed to draw an inference which ought to have been drawn, or, an inference on the face of it is untenable resulting in miscarriage of justice — In instant case Arbitral Tribunal failed to consider a glaring fact and did not apply the same test adopted for holding appellant liable for delay to respondent for respondent's failure to take timely action in right earnest — Thus, Arbitral Tribunal violated the abovesaid juristic principles and thus violated the "fundamental policy of Indian law". ONGC Ltd.* v. *Western Geco International Ltd.*, (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12: AIR 2015 SC 363: (2014) 107 ALR 333: (2014) 143 AIC 237.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

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Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223: (1947) 2 All ER 680 (CA), approved

ONGC Ltd. v. Western Geco International Ltd., Appeal (OS) No. 24 of 2006 in Arbitration Petition No. 203 of 2005, order dated 10-2-2006 (Bom); ONGC Ltd. v. Western Geco International Ltd., 2005 SCC OnLine Bom 1412: (2006) 3 Bom CR 848, modified

— **Ss. 37 and 34** *See* CIVIL PROCEDURE CODE, 1908, Or. 1 R. 9 and Or. 41 R. 20, (2014) 13 SCC 662: (2014) 5 SCC (Civ) 761

— **S. 37(1)(b)** *See* S. 34

— **S. 37(2)** *See* S. 34

— **S. 42** *See also* S. 2(1)(e)

[74] — S. 42 — Principle enshrined under — Mandatory nature of — *Held, legislative intent is that all disputes arising out of a common arbitration agreement, arbitral proceeding or arbitral award, would lie only before one court — Hence, court wherein first application arising out of arbitration matter is filed, held, shall alone have jurisdiction to adjudicate upon dispute(s), which are filed later in point of time, even though jurisdiction to raise such disputes may legitimately lie before two or more courts. State of Maharashtra* v. *Atlanta Ltd.*, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206: AIR 2014 SC 1093: (2014) 3 LW 81.

Bench Strength **2**. Coram: *A.K. Patnaik* and **J.S. Khehar**, JJ. [Date of decision: 16-1-2014]

Atlanta Ltd. v. Road Deptt., (2013) 4 Mah LJ 601: (2013) 4 Bom CR 305, affirmed

[75] — Ss. 43, 2(9), 8, 11 and 21 — Counterclaim — Whether made within limitation period — Determination of — Relevant date for — General rule and exception thereto laid down in *Praveen Enterprises*, (2012) 12 SCC 581 — Twin test for invoking said exception — *Reiterated, general rule is that the date on which counterclaim is made by respondent before arbitrator will be its date of "institution" — Thus, it is normally with reference to this date that it has to be determined whether counterclaim is made within limitation — S. 21 is not relevant for counterclaim — However, there is an exception to this general rule: where respondent against whom a claim is made, had (i) also made a claim against the claimant, and (ii) sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counterclaim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under S. 11, then the limitation for such counterclaim should be computed with reference to date of service of notice of such claim on the claimant and not with reference to date of filing of the counterclaim before arbitrator — Limitation Act, 1963, S. 3(2)(b) — CPC, 1908, Or. 8 Rr. 6-A and 6-B. Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

Inder Singh Rekhi v. DDA, (1988) 2 SCC 338; J&K State Forest Corpn. v. Abdul Karim Wani, (1989) 2 SCC 701, explained and distinguished

R.S. Bachawat: Law of Arbitration, First Edn., p. 354, cited

State of Goa v. Praveen Enterprises, (2012) 12 SCC 581, clarified and applied

McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; BSNL v. Motorola India (P) Ltd., (2009) 2 SCC 337: (2009) 1 SCC (Civ) 524; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306, distinguished

Rolta India Ltd. v. Voltas Ltd., (2013) 6 AIR Bom R 823; Rolta India Ltd. v. Voltas Ltd., Appeal (OS) No. 8 of 2013 in Arbitration Petition (Lodg) No. 1240 of 2012, decided on 16-8-2013 (Bom), modified

[76] — Ss. 43, 2(9), 21 and 23 — Counterclaim(s) whether raised within limitation period — Reckoning of — Exception to general rule as laid down in *Praveen Enterprises*, (2012) 12 SCC 581 (*see* Shortnote *A* in SCC) — Applicability of — Quantification/particularisation of counterclaims — Extent to which, and stage at which

must be done to take benefit of said exception, to escape time bar — *In instant case, in response to appellant's claims, respondent served notice on appellant for referring counterclaims on 17-4-2006 under specific heads for Rs 68.64 crores, but filed enhanced counterclaims of Rs 333 crores by including claims for damages on 26-9-2011 before arbitrator — Hence, in view of* Praveen Enterprises, *(2012) 12 SCC 581, held, only counterclaims for Rs 68.64 crores raised in notice to claimant were within limitation since said notice was within 3 yrs from date when cause of action arose — Enhanced counterclaims for damages over and above Rs 68.64 crores made for the first time before arbitrator are barred by limitation since they were filed beyond 3 yrs from date when cause of action arose — Respondent's plea that such claims for damages raised before arbitrator are also within limitation as it reserved right to quantify them in the notice dt. 17-4-2006 rejected since time-barred claims cannot be asserted after prescribed period of limitation — Matter remitted to arbitrator by limiting counterclaims to Rs 68.64 crores to decide disputes on merits — Limitation Act, 1963, S. 3(2)(b)* (Paras 11 to 31). *Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

Inder Singh Rekhi v. DDA, (1988) 2 SCC 338; J&K State Forest Corpn. v. Abdul Karim Wani, (1989) 2 SCC 701, explained and distinguished

R.S. Bachawat: Law of Arbitration, First Edn., p. 354, cited

State of Goa v. Praveen Enterprises, (2012) 12 SCC 581, clarified and applied

McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181; BSNL v. Motorola India (P) Ltd., (2009) 2 SCC 337: (2009) 1 SCC (Civ) 524; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306, distinguished

Rolta India Ltd. v. Voltas Ltd., (2013) 6 AIR Bom R 823; Rolta India Ltd. v. Voltas Ltd., Appeal (OS) No. 8 of 2013 in Arbitration Petition (Lodg) No. 1240 of 2012, decided on 16-8-2013 (Bom), modified

— S. 44 *See also* Ss. 7; 45

[77] — Ss. 44, 45 and 5 — Extent of intervention by court in arbitration process — Least intervention principle — Courts play a supportive role in encouraging the arbitration to proceed rather than letting it come to a grinding halt and equally important is the principle of least intervention by the court. *Enercon (India) Ltd.* v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

Halsbury's Laws of England (Vol. 13, 4th Edn., 2007 Reissue), relied on

[78] — Ss. 44 & 45 and 8 — Reference of disputes to arbitration — Formal request for — What amounts to — *Held, filing of affidavit that arbitration clause has already been invoked and arbitration proceedings have commenced, amounts to making request to refer parties to arbitration. World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

[79] — Ss. 44 & 45 and 8 & 5 — Bar of jurisdiction of civil courts — Applicability — Arbitration clause in agreement, held, does not oust jurisdiction of civil court — However, in view of Ss. 44 and 45, once a request is made to refer parties to arbitration, court is obliged to refer parties to arbitration, unless court finds that agreement is void, inoperative or incapable of being performed — *In present case, since cause of action arose in Mumbai, fact that arbitration clause conferred jurisdiction on Singapore courts did not oust jurisdiction of Bombay High Court — However, once arbitration clause was invoked Bombay High Court was bound to give effect to mandate of Ss. 44 and 45 — CPC, 1908, Ss. 9 and 20. World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

Black's Law Dictionary, 5th Edn., relied on

[80] — Ss. 44, 46, 48 & 49 and Sch. I — Execution of foreign award — Award, if to be confirmed under US law before its execution in India — New York Convention awards — Double exequatur (i.e. double official recognition) — Principle of — Inapplicability — *Held, rule of double exequatur or double official recognition is dispensed with in 1996 Act by adoption of New York Convention — Hence, confirmation of arbitration award by courts of the country where arbitration took place that said award was enforceable in that country, is not required for enforcement of New York Convention awards in India — With consent of parties, foreign Court (Wake Country Superior Court in the State of North Carolina, USA) referred disputes between parties to arbitration — As arbitration award was passed in USA against appellant (Indian Company), respondent filed petition in India for execution of award — Objection of*

appellant that unless award is confirmed by foreign court per S. 9 of Federal Arbitration Act of US (as per double exequatur principle), award is not executable in India since not binding, dismissed by High Court — Sustainability — On facts, held, under US law issue notice of three months is imperative if a party wants to dispute award, which was not complied with by petitioner — Further, consent order for referring disputes to arbitration clearly recorded that award given by arbitrator is final and binding on parties — Also, rule of double exequatur is dispensed with in view of changed law by adoption of provisions of New York Convention by 1996 Act — Hence, held, no error in order of High Court rejecting objections — Appeal dismissed — Federal Arbitration Act (US), S. 9 or S. 202 (Para 9). *Escorts Ltd.* v. *Universal Tractor Holding LLC*, (2013) 10 SCC 717: (2014) 1 SCC (Civ) 120: (2013) 177 Comp Cas 523: (2014) 2 MPLJ 31: (2014) 2 Mah LJ 524: AIR 2013 SC Supp 238.

Bench Strength **2**. Coram: *H.L. Gokhale* and *Dipak Misra*, JJ. [Date of decision: 13-3-2013]

Universal Tractors Holding LLC v. Escorts Ltd., (2012) 192 DLT 273, affirmed

Florasynth Inc. v. Pickholz, 750 F 2d 171 (2nd Cir 1984), impliedly approved

[81] — Ss. 44 and 48 — Foreign award — Courts in India, held, do not have appellate jurisdiction over foreign awards — They cannot enquire as to occurrence of an error which might have occurred while foreign award was being rendered. *Shri Lal Mahal Ltd.* v. *Progetto Grano Spa*, (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1: (2013) 4 CTC 636: (2013) 4 LW 542.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 3-7-2013]

Progetto Grano SpA v. Shri Lal Mahal Ltd., CS (OS) No. 2594A of 2000, decided on 9-2-2012 (Del), affirmed

[82] — Ss. 44 and 48 — Foreign award — Enforcement of — Grounds on which may be refused — Ground not accepted by courts of juridical/legal seat of arbitration to set aside award — *Held, if a ground purportedly supported by judicial precedents of juridical/legal seat of arbitration was not good enough for setting aside award by court of that country, such ground can hardly be a good ground for refusing enforcement of foreign award in India. Shri Lal Mahal Ltd.* v. *Progetto Grano Spa*, (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1: (2013) 4 CTC 636: (2013) 4 LW 542.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 3-7-2013]

[83] — Ss. 44 and 48(2)(b) — Foreign awards — Enforcement of — Review of foreign award on merits — Impermissibility of — *Held, review of foreign award on merits is not provided under S. 48 — Once a foreign award has attained finality, there is no scope for a second look at the merits at the stage of enforcement of foreign award. Shri Lal Mahal Ltd.* v. *Progetto Grano Spa*, (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1: (2013) 4 CTC 636: (2013) 4 LW 542.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 3-7-2013]

Progetto Grano SpA v. Shri Lal Mahal Ltd., CS (OS) No. 2594A of 2000, decided on 9-2-2012 (Del), affirmed

[84] — Ss. 44 & 48(2)(b) and S. 34(2)(b)(ii) — Foreign award — Enforcement of — Wider meaning given to expression "public policy of India" occurring in S. 34(2)(b)(ii) in *Saw Pipes*, (2003) 5 SCC 705, held, is not applicable to enforcement of foreign awards under S. 48(2)(b) — Extending ratio in *Renusagar*, 1994 Supp (1) SCC 644, held, expression and concept "public policy of India" though same in nature in S. 34(2)(b)(ii) and S. 48(2)(b), its application is narrower in enforcement of foreign awards than in respect of enforcement of domestic arbitral awards — *Thus, enforcement of foreign award would be refused on the ground that it is contrary to the public policy of India only if it is covered by one of the three categories enumerated in* Renusagar case — *Hence, held, contravention of law alone will not attract bar of public policy and something more than contravention of law is required for refusal of enforcement of a foreign award on the ground that it is contrary to public policy of India — Suit filed before High Court for enforcement of two awards passed by Grain and Feed Trade Association, London (GAFTA) confirmed by Board of Appeal objected to on ground that said awards are against public policy of India — Rejecting objections, High Court allowed suit holding that public policy under S. 48 is to be construed narrowly — Tenability — Contention that awards cannot be enforced since they were contrary to public policy of India as both Arbitral Tribunal, GAFTA and Arbitral Board of Appeal have gone beyond terms of contract, ignoring that certificate of quality obtained at loading port was final — Sustainability — Expression "public policy of India" in S. 48(2)(b), held, has same import as that of "public policy" in S. 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961 — Thus, for purpose of enforcement of foreign awards, expression "public policy" must be given narrower meaning than when enforcing awards under domestic arbitration — Since expression "public policy" in 1961 Act is not followed by words "and the law of India", extending ratio in* Renusagar **case**, *held, contraven-*

tion of law alone will not attract bar of public policy and something more than contravention of law is required for enforcement of a foreign award to be contrary to public policy of India — Hence, errors of fact by Board of Appeal in rejecting certificate of quality obtained by appellants and relying on a report inconsistent with terms of contract would not bar enforceability of foreign awards on ground of being contrary to public policy of India — On facts, Board of Appeal held that sellers (appellants) failed to establish that certificate of quality was in contractual form and that said certification did not follow contractually specified mode of sampling — Analysis by certifying agency was, thus, doubted and it was held that sellers were in breach of description condition of contract, confirmed by High Court of Justice at London — As S. 48 does not permit review of foreign awards on merit, held, there is no scope for a second look at the merits at the stage of enforcement of foreign award — Further, procedural defects (like considering inadmissible evidence or ignoring/rejecting evidence which may be of binding nature) in the course of foreign arbitration are not grounds which would attract S. 48(2)(b) to interfere with enforcement of foreign award — Since objections raised by appellants do not establish that enforcement of the foreign awards in question would be contrary to the public policy of India, no interference is called for with order of High Court — CPC, 1908, Ss. 13 and 14 — Foreign Awards (Recognition and Enforcement) Act, 1961, S. 7(1)(b)(ii) — Words and Phrases — "Public policy", "public policy of India" and "law of India" — Same expression, different meanings. Shri Lal Mahal Ltd. v. *Progetto Grano Spa*, (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1: (2013) 4 CTC 636: (2013) 4 LW 542.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 3-7-2013]

Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, followed and extended

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, explained and distinguished

Phulchand Exports Ltd. v. O.O.O. Patriot, (2011) 10 SCC 300: (2012) 1 SCC (Civ) 131, para 16, overruled

Progetto Grano SpA v. Shri Lal Mahal Ltd., CS (OS) No. 2594A of 2000, decided on 9-2-2012 (Del), affirmed

— **S. 45** *See also* Ss. 2(2); 7; 8; 44; 45

[85] — S. 45 — Reference to arbitration — Grounds on which may be declined — Agreement between parties purportedly affecting finances, funds and rights of public body, and hence purportedly being opposed to public policy — Consideration of, to decline reference to arbitration under S. 45 — Held, not proper — *Only grounds on which reference to arbitration can be declined under S. 45 is if arbitration agreement is null and void, inoperative or incapable of being performed* [**Ed.**: *for meaning of "public policy" in the context of refusal to enforce foreign awards* see Shri Lal Mahal Ltd. *v.* Progetto Grano Spa, *(2014) 2 SCC 433: (2014) 2 SCC (Civ) 1.*]. *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

[86] — S. 45 — Reference to arbitration — Pending suit on the same issue in Indian court, held, is not ground to decline reference to arbitration under S. 45. *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

[87] — Ss. 45 and 8 — Reference to arbitration — Foreign-seated arbitration — Arbitration agreements covered under New York Convention — Grounds on which reference to arbitration may be declined — Reference of disputes to arbitration where underlying/main agreement itself is alleged to be fraudulently entered into — Mandatoriness of — Principle of separability of arbitration clause from underlying/main contract — Applicability of — Power of arbitrator to decide issue of fraud — *In arbitration agreements covered by New York Convention, held, court cannot decline to refer parties to arbitration except where court finds that arbitration agreement is null and void, inoperative or incapable of being performed — Thus, allegations of fraud in respect of main/underlying agreement requiring enquiry are not a ground to reject plea for reference of disputes to arbitration under S. 45 — Facilitation Deed for media rights with appellant rescinded by respondent on ground that respondent was induced to execute said deed on a false representation by appellant that it had Indian Sub-continent media rights for IPL (a club cricket tournament) from BCCI and also filed suit to declare that said deed as void before Bombay High Court — Invoking arbitration clause (Cl. 9 of Facilitation Deed), appellant requested ICC Singapore for adjudication of disputes — In suits filed by respondent, Single Judge of Bombay High Court dismissed application for temporary injunction against invocation of arbitration clause holding that it would be for arbitrator to consider whether said Facilitation Deed was voidable on account of*

fraud and misrepresentation — Division Bench of High Court setting aside said order and restraining arbitration holding Facilitation Deed as contrary to public policy of India — Tenability — Held, in agreements which provide for foreign-seated arbitrations, court is liable to refer parties to arbitration unless it finds that said arbitration agreement is null and void, inoperative or incapable of being performed — Arbitration agreement does not become "null and void", or "inoperative" or "incapable of being performed" if allegations of fraud are to be inquired into — Since said words in S. 45 have been adopted from New York Convention, said words shall be given meaning attributed to them in international context — Thus, High Court was required to only consider whether Cl. 9 of Facilitation Deed containing arbitration agreement was null and void, inoperative or incapable of being performed — Further held, (another) pending suit on same issue in Indian court, is not a ground to decline reference to arbitration — Where allegations of fraud in the procurement or performance of a contract are alleged, there is no reason for Arbitral Tribunal to decline jurisdiction — Hence, Single Judge of Bombay High Court rightly held that it is for the arbitrator to decide this dispute in accordance with arbitration agreement — Hence, order of Single Judge restored, and arbitration under ICC Singapore permitted to continue — Words and Phrases — "Inoperative or incapable of being performed", "null and void", "void" and "voidable" — Contract Act, 1872, Ss. 13, 14, 19, 23 and 28. World Sport Group (Mauritius) Ltd. v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

Black's Law Dictionary, 5th Edn.; Redfern and Hunter on International Arbitration (5th Edn., p. 134 para 2.141); Russell on Arbitration, Paras 7-056, 7-058; Redfern and Hunter on International Arbitration (5th Edn.) by Oxford University Press; Albert Jan Van Den Berg in an article titled "The New York Convention, 1958 — An Overview" (www.arbitration-icca.org/media/0/12125884227980/new_york_convention_of-1958_overview.pdf); Kronke, Nacimiento: Recognition and Conferment of Foreign Arbitral Awards: A Global Commentary on the New York Convention, et al.(ed.) (2010), relied on

SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66: (2012) 4 SCC (Civ) 777; Fili Shipping Co. Ltd. v. Premium Nafta Products Ltd., 2007 Bus LR 1719: 2007 UKHL 40 (HL), applied

N. Radhakrishnan v. Maestro Engineers, (2010) 1 SCC 72: (2010) 1 SCC (Civ) 12; Abdul Kadir Shamsuddin Bubere v. Madhav Prabhakar Oak, AIR 1962 SC 406, distinguished on facts

MSM Satellite (Singapore) Pte. Ltd. v. World Space Group (Mauritius) Ltd., Suit No. 1828 of 2010, order dated 9-8-2010 (Bom), affirmed

MSM Satellite (Singapore) Pte. Ltd. v. World Sport Group (Mauritius) Ltd., 2011 Supp Bom CR 4, reversed

[88] — Ss. 45, 44, 5, 7, 10, 11 and 8 and 45 — Reference to arbitration — Arbitration clause — Interpretation of — Unworkable clause alleged — Power and duty of court — Supportive role of court in arbitrations — Power to supply obvious omission in arbitration clause — Invocation of — When justified — Officious bystander and reasonable business person principles — Applicability — Unworkability attributed only to machinery provision, and arbitration clause otherwise valid — Relevance — *Held, when faced with a seemingly unworkable arbitration clause, it is the duty of the court to make the same workable within permissible limits of the law, without stretching it beyond the boundaries of recognition — Ss. 8, 10, 11 and 45 of 1996 Act confer power upon court to prevent failure of arbitration — A common sense approach has to be adopted to give effect to the intention of the parties to arbitrate — Attitude of a reasonable business person and an officious bystander has to be adopted — Thus, court can legitimately supply the missing line/obvious omission to give effect to intention of the parties to arbitrate — Arbitration clause in present case providing for Arbitral Tribunal to consist of three arbitrators mentioning appointment of one each by the licensee and the licensor, but omitting procedure for appointment of third arbitrator — Held, applying officious bystander principle, given that two arbitrators have been appointed by the parties, missing line "two arbitrators appointed by the parties shall appoint the third arbitrator" read into arbitration clause — In the facts and circumstances, Supreme Court itself appointing* **H** *as third arbitrator to act as Chairman of Arbitral Tribunal. Enercon (India) Ltd.* v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

Halsbury's Laws of England (Vol. 13, 4th Edn., 2007 Reissue), relied on

[89] — Ss. 45, 44, 16, 8 and 11 — Reference to arbitration under S. 45 — Grounds on which may be denied — Arbitration agreement when "null and void, inoperative or incapable of being performed" — Arbitration agreement irrevocably agreed to by parties, contained in unconcluded underlying substantive contract — Independence of arbitration agreement

from underlying contract — Intention of parties to arbitrate — Absence of pleadings that arbitration agreement was null and void, inoperative or incapable of being performed — Relevance — *Arbitration clause is treated as an agreement independent of the underlying substantive contract — Thus, fact that underlying contract may not be concluded, held, does not fall within parameters of an arbitration agreement being "null and void, inoperative or incapable of being performed" where court can decline to make a reference to arbitration — Legitimacy or independence of the arbitration agreement is not affected even if it is contained in a contract, which is claimed to be void or voidable or unconcluded by one of the parties — Moreover, the issue whether there is a concluded underlying contract between the parties can be left to the Arbitral Tribunal, as directed in present case — In present case, it was appellants' contention that IPLA which contained the arbitration clause, was unconcluded, hence a reference to arbitration could not be made — Held, reading of various agreements between the parties i.e. SHA, TKHA, "Heads of Agreement of proposed IPLA" and Cl. 18 of the proposed IPLA, makes it abundantly clear that the parties have irrevocably agreed to settle any dispute or claim by arbitration and intention to arbitrate has continued without waiver — Further, arbitration agreement contained in Cls. 18.1 to 18.3 of IPLA is very widely worded and would include all the disputes, controversies or differences concerning the legal relationship between the parties and includes disputes arising in respect of the IPLA with regard to its validity, interpretation, construction, performance, enforcement or its alleged breach — Hence, parties must proceed with the arbitration — Contract Act, 1872, Ss. 14 to 20. Enercon (India) Ltd.* v. *Enercon GmbH*, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59: AIR 2014 SC 3152.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 14-2-2014]

Halsbury's Laws of England (Vol. 13, 4th Edn., 2007 Reissue), relied on

— **Ss. 46 and 48** *See* S. 44

— **S. 48(2)(b)** *See* S. 44

— **S. 49** *See* S. 44

— **S. 67** *See* FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

See also RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— **Sch. I** *See* S. 44

4. ARBITRATION CLAUSE

— **Severability of, from the underlying contract** *See* 'Arbitration and Conciliation Act, 1996', Ss. 7, 16, 44 & 45 and 8 & 11, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

5. FEDERAL ARBITRATION ACT (US)

— **S. 9 or S. 202** *See* 'Arbitration and Conciliation Act, 1996', Ss. 44, 46, 48 & 49 and Sch. I, (2013) 10 SCC 717: (2014) 1 SCC (Civ) 120

6. FOREIGN AWARDS

— **Double exequatur doctrine — When applicable** *See* 'Arbitration and Conciliation Act, 1996', Ss. 44, 46, 48 & 49 and Sch. I, (2013) 10 SCC 717: (2014) 1 SCC (Civ) 120

7. FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) ACT, 1961

— **S. 7(1)(b)(ii)** *See* 'Arbitration and Conciliation Act, 1996', Ss. 44 & 48(2)(b) and S. 34(2)(b)(ii), (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1

8. JUDICIAL INTERVENTION

— **Least intervention principle** *See* 'Arbitration and Conciliation Act, 1996', Ss. 44, 45 and 5, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

9. LAWS THAT MAY APPLY TO AN ARBITRATION

See 'Arbitration and Conciliation Act, 1996', (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737

10. PLEADINGS/CLAIMS/COUNTERCLAIMS

— **Amendment to — When time-barred** *See* CIVIL PROCEDURE CODE, 1908, Or. 6 R. 17, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

ARBITRATION ACT, 1940

See ARBITRATION

ARBITRATION AGREEMENT

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Particular deeds, documents and clauses

ARBITRATION AND CONCILIATION ACT, 1996

See ARBITRATION

ARBITRATION CLAUSE

See ARBITRATION

ARBITRATION MATTERS

See also CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136

— 'Article 226' — Scope of Judicial review/Interference under Art. 226

ARREARS OF RENT/DEFAULT/TENDER OF RENT/STRIKING OFF DEFENCE

See RENT CONTROL AND EVICTION

ARREST

See CONSTITUTION OF INDIA

ARTICLES/COMMODITIES/ITEMS
See CONSTITUTION OF INDIA
See also EXCISE

ASSIGNMENT/SUBROGATION
See INSURANCE

ASSOCIATIONS, SOCIETIES AND CLUBS

1. PROPERTY OF THE ASSOCIATION, SOCIETY OR CLUB

See COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

2. SOCIETIES REGISTRATION ACT, 1860

— **Generally** *See* TRUSTS AND TRUSTEES — 'Bombay Public Trusts Act, 1950 (29 of 1950)', (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— **Ss. 13 and 5** *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

AUCTION OF FLATS/ALLOTMENT/PLOTS/ HOUSES/SHOPS BY HOUSING BOARD/ DEVELOPMENT AUTHORITY
See LOCAL GOVERNMENT — 'Town Planning'

AUDI ALTERAM PARTEM — RIGHT TO HEARING
See ADMINISTRATIVE LAW — 'Natural Justice'
See also CONSTITUTION OF INDIA — 'Article 14' — Procedural Equality — Natural Justice
See also NATURAL JUSTICE

AUTHORITY/STATUTORY BODY
See STATUTE LAW

AWARD OF LICENCES/PERMITS/QUOTAS
See CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts

BAILMENT
See CONTRACT AND SPECIFIC RELIEF — 'Specific Contracts'

BANK ACCOUNT/OPENING OF ACCOUNT
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

BANK EMPLOYEE/BANK OFFICERS/ OFFICIALS/MISCONDUCT
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

BANK OFFICERS/BANK EMPLOYEE/ OFFICIALS/MISCONDUCT
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

BANK SCAM/CRIMINAL CONSPIRACY/ EMBEZZLEMENT/FORGERY
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

BANKER AND CUSTOMER
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

BANKER'S LIEN
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

BANKING AND OTHER FINANCIAL SERVICES
See CONSUMER PROTECTION — 'Services'

BANKING BUSINESS/SERVICES/CUSTOMER SERVICE/NEGLIGENCE/TRANSACTIONS
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

BANKING REGULATION ACT, 1949
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

BANKS
See DEBT, FINANCIAL AND MONETARY LAWS

BASIC FEATURES OR STRUCTURE OF THE CONSTITUTION
See CONSTITUTIONAL LAW

BEIJING DECLARATION AND PLATFORM FOR ACTION, 1995
See HUMAN AND CIVIL RIGHTS

BELIEFS AND MORALITY/JUDGE'S PERCEPTION
See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

BENEFICENT CONSTRUCTION OF STATUTES
See INTERPRETATION OF STATUTES — 'Basic Rules'

BENEFIT OF RENT/TENANCY ACT/ PROTECTED TENANCY
See RENT CONTROL AND EVICTION

BENGAL MONEY-LENDERS ACT, 1940 (10 OF 1940)
See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Moneylending

BIAS/JUDICIAL PROPRIETY
See COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary'

BIAS/NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA
See ADMINISTRATIVE LAW — 'Natural Justice'
See also NATURAL JUSTICE

BILL OF EXCHANGE/DISCOUNTING CHEQUE
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

BODILY INTEGRITY/CONSTITUTIONAL/ PUBLIC LAW TORTS/PUBLIC SAFETY
See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Narrowly construed

BOMBAY GENERAL CLAUSES ACT, 1904 (1 OF 1904)
See STATUTE LAW — 'General Clauses Acts'

BOMBAY MUNICIPAL CORPORATION ACT, 1888 (3 OF 1888)
See LOCAL GOVERNMENT — 'Municipalities'

BOMBAY PUBLIC TRUSTS ACT, 1950 (29 OF 1950)
See TRUSTS AND TRUSTEES

BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, 1947 (57 OF 1947)
See RENT CONTROL AND EVICTION

BOMBAY SALES TAX ACT, 1959 (51 OF 1959)
See SALES TAX AND VAT

BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948 (67 OF 1948)
See TENANCY AND LAND LAWS

BOMBAY TENANCY AND AGRICULTURAL LANDS RULES, 1956
See TENANCY AND LAND LAWS

BONA FIDE REQUIREMENT OF LANDLORD
See RENT CONTROL AND EVICTION

BRAND/CONNECTION BETWEEN BUSINESS/GOODS AND DISTINCTIVE MARK/BRAND
See INTELLECTUAL PROPERTY — 'Trade Marks'

BRANDED GOOD
See INTELLECTUAL PROPERTY — 'Trade Marks'

BREACH OF CONFIDENCE
See TORT LAW

BREACH OF CONTRACT/TERMINATION OF CONTRACT
See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Remedies for Breach of Contract — Specific Remedies — Specific Performance of Contract — Defences respecting suits for relief based on contract

BREACH OF STATUTORY DUTY
See TORT LAW

BROADCASTING/TELECAST RIGHTS
See PRESS AND MEDIA LAWS

BURDEN OF PROOF
See ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power
See also CIVIL SUIT
See also NATURAL JUSTICE — 'Mala Fides/Colourable Exercise of Power'

BURMAH SHELL (ACQUISITION OF UNDERTAKINGS IN INDIA) ACT, 1976
See ACQUISITION, REQUISITION AND NATIONALISATION

BYE-LAWS
See COOPERATIVE SOCIETIES — 'General Issues'

CALCUTTA MUNICIPAL CORPORATION ACT, 1951 (33 OF 1951)
See LOCAL GOVERNMENT — 'Municipalities'

CANCELLATION OF AGREEMENT/CONTRACT/LICENCE
See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

CANCELLATION OF CONTRACT/TERMINATION/REPUDIATION/DISCHARGE
See GOVERNMENT CONTRACTS/TENDERS

CANCELLATION/TERMINATION
See GOVERNMENT CONTRACTS/TENDERS

CANTONMENT LAND ADMINISTRATION RULES
See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

CARRIAGE OF GOODS AND CARRIERS

1. GENERALLY

— Insurance — Non-delivery of goods *See* INSURANCE — 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

2. CARRIAGE OF GOODS BY SEA ACT, 1925

[90] — Ss. 2 & 3 and Sch. Art. III R. 3 — Mate's receipt — Status of — Mate's receipt is acknowledgement of receipt of goods on board a ship, issued by Master of the ship or his agent — It is authority and instruction to agent of shipowner to issue bills of lading to shipper (Paras 31 to 33). *Shaw Wallace & Co. Ltd.* v. *Nepal Food Corporation*, (2011) 15 SCC 56: (2014) 2 SCC (Civ) 225: AIR 2012 SC 72.

Bench Strength 2. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 13-10-2011]

[91] — Ss. 2 & 3 and Sch. Art. III R. 3 — Prompt issue of bills of lading by carrier or his agent to shipper on receipt of mate's receipt — Requirement of — Liability for breach of statutory duty or breach of legal duty at common law giving rise to claim of negligence — When arise — Denial of issuance of or delay in issuance of bills of lading — Effect — *Held, having regard to Sch. Art. III R. 3 of 1925 Act, a statutory duty cast on carrier (shipowner) or his agent to issue of bills of lading to shipper immediately on receipt of mate's receipt — If loss is caused due to breach of statutory or any legal duty amounting to negligence, carrier and its agent are jointly and severally*

liable to make good the loss by way of damages ***Civil Appeal No. 7100 of 2001*** *Appellant agent of carrier having received mate's receipts as to proof of loading of goods on board the ship by respondent seller (shipper), did not issue bills of lading on pretext of instructions from carrier and demanded bank guarantee towards demurrage charges for lay time of ship — Consequently, respondent seller could not realise value of goods since letters of credit created by buyer expired — Suit filed claiming damages from shipowner and his agent decreed in favour of respondent seller — In appeal, Single Judge and Division Bench of High Court dismissed appeals holding that appellant was liable for breach of its statutory duty and also negligence in performing its legal duty at common law — Sustainability — In instant case, held, delivery of goods on board the ship was completed on 4-12-1978 and respondent seller shipper submitted mate's receipt on 17-12-1979 to appellant agent of shipowner demanding bills of lading, so that it could realise value of goods by producing same before bank by 15-1-1979, since letters of credit were valid up to said date — However, after 15 days after submission of mate's receipts, for the first time appellant demanded bank guarantee towards demurrage charges from respondent without mentioning demurrage amount for release of bills of lading — On 15-1-1979, appellant informed respondent of amount for which bank guarantee was to be submitted — Thus, even if respondent wanted to give bank guarantee, it could not have given bank guarantee before 15-1-1979 and letters of credit expired on 15-1-1979 — Further, respondent seller did not have any obligation towards shipowner to pay either freight or demurrage charges since as per charter party agreement, charterer (buyer) was responsible to pay demurrage charges for detention of the vessel — Thus, held, appellant committed breach of statutory duty cast on it by deliberately delaying issue of bills of lading causing loss to respondent — Further held, appellant also acted negligently in performance of its legal duty at common law to issue bills of lading on delivery of mate's receipt, as agent of shipowner — Hence, liability of appellant agent arose by reason of breach of its statutory duty and also by reason of negligence in performing its legal duty at common law to release bills of lading when demanded — Therefore, appellant along with shipowner is jointly and severally responsible for the loss caused to respondent — Appeal dismissed (Paras 29 to 39)* ***Civil Appeal No. 7099 of 2001*** *In instant case, respondent submitted mate's receipts to appellant for issue of bills of lading only after expiry of letters of credit — Hence, even if appellant had delivered bills of lading on the day of demand itself, respondent could not have realised value of goods against letters of credit — Letters of credit having expired on 15-1-1979 long prior to tendering of mate's receipt and demand for bills of lading, delay in issuance of bills of lading had no relevance — Thus, it cannot be said that there was any default, negligence or delay on the part of appellant in issuing bills of lading — Hence, liability for loss cause to respondent cannot be fastened on appellant — Appeal allowed — Contract Act, 1872, Ss. 211, 212, 233 and 73* (Paras 54 to 60). *Shaw Wallace & Co. Ltd.* v. *Nepal Food Corporation*, (2011) 15 SCC 56: (2014) 2 SCC (Civ) 225: AIR 2012 SC 72.

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 13-10-2011]

Shaw Wallace and Co. Ltd. v. Nepal Food Corpn. Ltd., APO No. 323 of 1988 decided on 14-9-2001 (Cal), affirmed

Halsbury's Laws of England [4th Edn., Vol. 43(2), Shipping & Navigation, pp. 1042-43]; Scrutton on Charterparties and Bills of Lading (21st Edn., 2008); Carver's Carriage by Sea (13th Edn., Vol. 1, p. 41, para 54), referred to

Shaw Wallace and Co. Ltd. v. Nepal Food Corpn., (2001) 3 Cal LT 429, reversed

CARRIAGE OF GOODS BY SEA ACT, 1925
See CARRIAGE OF GOODS AND CARRIERS

CASUS OMISSUS
See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Subsidiary rules

CAUSATION OF HARM
See TORT LAW

CAUSATION OF LOSS
See TORT LAW

CAUSE OF ACTION/ACTION
See PRACTICE AND PROCEDURE

CAWNPORE URBAN AREA DEVELOPMENT ACT, 1945
See LOCAL GOVERNMENT — 'Town Planning'

CEILING ON LAND
See TENANCY AND LAND LAWS

CENTRAL ADOPTION RESOURCE AGENCY (CARA) GUIDELINES GOVERNING THE ADOPTION OF CHILDREN, 2011
See FAMILY AND PERSONAL LAWS

CENTRAL/GOVERNMENT DOCTORS/STATE HEALTH SERVICES

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics'

CESSATION OF INTEREST/DATE OF COMMENCEMENT

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

CHANDIGARH (DELEGATION OF POWERS) ACT, 1987

See LAND ACQUISITION AND REQUISITION

CHILD CUSTODY

See CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW

See also FAMILY AND PERSONAL LAWS

CHRISTIAN LAW

See FAMILY AND PERSONAL LAWS

CHURCHES

See TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts'

CINEMAS, VIDEOS AND CABLE TELEVISION

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Cinemas, Videos and Cable Television'

CINEMATOGRAPH ACT, 1952

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Cinemas, Videos and Cable Television'

CIVIL AND CRIMINAL PROCEEDINGS

See PRACTICE AND PROCEDURE

CIRCULARS/PRIMACY OVER ADMINISTRATIVE ORDERS/DECISIONS/EXECUTIVE INSTRUCTIONS/ORDERS

See ADMINISTRATIVE LAW — 'Subordinate/Delegated Legislation'

See also STATUTE LAW — 'Subordinate/Delegated Legislation'

CIVIL PROCEDURE CODE, 1908

[92] — Generally — Historical background of — Provisions of CPC have evolved as a matter of long years of experience emanating out of the common law of England. *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength 2. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— S. 2(2) *See* S. 33

See also FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— S. 2(11) *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

— S. 2(14) *See* S. 33

— S. 9 *See* S. 47

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4), 17, 34 and 35, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444

See also LIMITATION — 'Limitation Act, 1963', S. 27 and Art. 65, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

See also RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

See also TENANCY AND LAND LAWS — 'Jurisdiction', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

[93] — Ss. 9, 11 and 47 — Declaration of title and recovery of possession based thereon — Suit for — Jurisdiction of civil court whether ousted by Special Act (Mundkars Act, 1975) applicable to eviction of special class of persons (Mundkars i.e. a kind of licensee) — *Defendant denying that it belonged to such special class of persons i.e. it was not Mundkar of respondent and claiming that it was the owner of suit property — Held, it being a title suit and not a suit for eviction of Mundkar, civil court retained jurisdiction in the matter — Executing court erred in refusing to execute decree on ground of lack of jurisdiction of civil court — Further, earlier suit before Mamlatdar having been dismissed for default and not on merits, the same cannot operate as res judicata — Application for execution of decree granted in title suit for eviction of defendant from suit property — Objection raised before executing court that decree was without jurisdiction and a nullity as issues tried fell within jurisdiction of authorities under Mundkars Act, 1975 — Objection allowed and execution application rejected by executing court — High Court in writ petition filed by respondent thereagainst found that no plea regarding jurisdiction was taken by defendant in written statement — That, on the contrary defendant's specific case was that suit property was not mundkarial house, that defendant was the owner and it was not owned by plaintiff and that trial court while deciding issues framed had duly considered facts incidental thereto — Even in suit before Mamlatdar defendant had claimed that it was the owner — High Court, held, rightly concluded that issues tried by trial court were not within jurisdiction of authorities under Mundkars Act, 1975 and that lis was with regard to ownership of suit house since defendant could not pursue claim of mundkarial rights — Thus, High Court's*

view that trial court had jurisdiction to entertain suit, correct — Goa, Daman and Diu Mundkars (Protection from Eviction) Act, 1975 (1 of 1976), Ss. 4 and 13 — Evidence Act, 1872, Ss. 17, 58 and 116 — Specific Relief Act, 1963, S. 5 — Transfer of Property Act, 1882, S. 111(g)(2) — Easements Act, 1882, Ss. 60 and 64. Jacinta De Silva v. *Rosarinho Costa*, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588: AIR 2014 SC 1671: (2014) 5 Mah LJ 84: (2014) 104 ALR 524: (2014) 137 AIC 71.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-3-2014]

Rosarinho Costa v. Filomena Rodrigues E. Silva, WP No. 483 of 2003, order dated 17-11-2009 (Bom), affirmed

— Ss. 9 and 20 — Jurisdiction of civil court to try arbitration matters — Bar of — When comes into effect *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 44 & 45 and 8 & 5, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

— S. 9 and Or. 39 R. 1 — Exclusion of civil court's jurisdiction in regard to land acquisition proceedings *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4(1), 6 and 9, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— S. 10 *See* S. 96

— S. 11 *See* Ss. 9; 96

See also CONSTITUTION OF INDIA, Arts. 26(d) and 226, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— 'Article 226' — Maintainability of writ petition — Res judicata, Arts. 226, 32 and 136, (2014) 11 SCC 744

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 34, (2014) 1 SCC 669: (2014) 1 SCC (Civ) 630

See also PRACTICE AND PROCEDURE — 'Judgment/Decree/Order', (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— 'Res judicata', (2013) 15 SCC 655

[94] — S. 11 — Res judicata — Doctrine explained — Decision of court on question of law which attained finality would operate as res judicata even if the same is erroneous — Res judicata is accepted for truth — *Doctrines and Maxims — Res Judicata/Res Judicata Pro Veritate Accipitur — Words and Phrases — "Res" and "res judicata"*

The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". *Res judicata pro veritate accipitur* is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence *interest reipublicae ut sit finis litium* (it concerns the State that there be an end to law suits) and partly on the maxim *nemo debet bis vexari pro una et eadem causa* (no man should be vexed twice over for the same cause). (Para 39)

Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Para 40)

In view of the Explanation to Rule 1 of Order 47 CPC also, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Para 52)

In this case the sole question is whether an issue in a case between the same parties, which had been finally determined could be negated relying upon interpretation of law given subsequently in some other cases, and the answer is in the negative. More so, nobody can claim that fundamental rights can be waived by the person concerned or can be taken away by the State under the garb of regulating certain activities. Although a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardised and this would create a chaotic situation which may bring instability in the society. (Paras 38 and 48)

The declaration that "Dikshitars are religious denomination or section thereof" is in fact a declaration of their status and making such declaration is in fact a judgment in rem. In view of the fact that the rights of Respondent 6 to administer the Temple had already been finally determined by the High Court in 1951 and attained finality as the State of Madras (as it then was) had withdrawn the notification in the appeal before the Supreme Court, the State authorities under the 1959 Act could not pass any order denying those rights. Admittedly, the 1959 Act had been enacted after pronouncement of the said judgment but there is nothing in the Act taking away the rights of Respondent 6, declared by the Court, in the Temple or in the administration thereof. (Paras 49 and 53)

It was not permissible for the High Court to assume that it had jurisdiction to sit in appeal against its earlier judgment of 1951 which had attained finality. Even otherwise, the High Court has committed an error in holding that the said judgment in *Marimuthu Dikshithar case* would not operate as res judicata. Even if the Temple was neither established, nor owned by the said respondent, nor such a claim has ever been made by the Dikshitars, once the High Court in earlier judgment has recognised that they constituted "religious denomination" or section thereof and had the right to administer the Temple since they had been administering it for several centuries, the question of re-examination of any issue in this regard could not arise. (Para 56). *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

Sha Shivraj Gopalji v. Edappakath Ayissa Bi, (1949) 62 LW 770: AIR 1949 PC 302; Mohanlal Goenka v. Benoy Kishna Mukherjee, AIR 1953 SC 65; Raj Lakshmi Dasi v. Banamali Sen, AIR 1953 SC 33; Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941; Daryao v. State of U.P., AIR 1961 SC 1457; Greater Cochin Development Authority v. Leelamma Valson, (2002) 2 SCC 573; Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787; Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara, AIR 1964 SC 1013; Hope Plantations Ltd. v. Taluk Land Board, Peermade, (1999) 5 SCC 590; Burn & Co. v. Employees, AIR 1957 SC 38; G.K. Dudani v. S.D. Sharma, 1986 Supp SCC 239: 1986 SCC (L&S) 622: (1986) 1 ATC 241; Ashok Kumar Srivastav v. National Insurance Co. Ltd., (1998) 4 SCC 361: 1998 SCC (L&S) 1137; State of Punjab v. Bua Das Kaushal, (1970) 3 SCC 656; Union of India v. Nanak Singh, AIR 1968 SC 1370; Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153; Madan Mohan Pathak v. Union of India, (1978) 2 SCC 50: 1978 SCC (L&S) 103, followed

[95] — S. 11 — Res judicata — Inapplicability — Subject-matter of two proceedings not the same — *Pursuant to appellant's suit for eviction of tenant from suit property, tenant filed interpleader suit impleading appellant and Union of India as defendants for determining who among them was entitled to collect rent — Trial court's decree in interpleader suit entitling appellant to receive rent affirmed by High Court in second appeal by holding that without taking recourse to legal proceedings to evict appellant, Union of India could not demand rent and thus keeping open issue of title — That decree in turn stood affirmed by Supreme Court — In subsequent writ petitions before High Court, appellant claimed ownership, sought mutation of his name as owner of suit property and permission to raise construction — Held, subject-matter of two proceedings i.e. interpleader suit and appeals arising therefrom and writ petitions filed by appellant, not directly and substantially same so as to attract principle of res judicata*

The legal effect of the terms of the old grants (in Cantonment area) have been understood to be conveying a lease of the building standing on the cantonment land with the power of resumption in the cantonment authority subject to payment of compensation for the cost of the building and not as a lease of the land itself. (Para 16). *Purshottam Das Tandon* v. *Military Estate Officer*, (2014) 9 SCC 344: (2014) 5 SCC (Civ) 50: AIR 2014 SC 3555: (2015) 1 Mah LJ 574: (2014) 106 ALR 901: (2014) 142 AIC 95.

Bench Strength 2. Coram: **Ranjan Gogoi** and *M. Yusuf Eqbal*, JJ. [Date of decision: 13-8-2014]

P.D. Tandon v. Military Estate Officer, Writ-C No. 13353 of 1992, order dated 27-5-2005 (All), affirmed

Purshottam Dass Tandon v. Union of India, 1981 SCC OnLine All 808: (1983) 2 ARC 465, held, affirmed

— S. 11 Expln. IV — Constructive res judicata *See* EVIDENCE ACT, 1872, S. 112, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

— Ss. 13 and 14 *See* CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW — 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

— 'Jurisdiction', (2013) 15 SCC 790

See also FAMILY AND PERSONAL LAWS — 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

— Ss. 13 and 14 — Foreign award/judgment — Enforceability of *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 44 & 48(2)(b) and S. 34(2)(b)(ii), (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1

[96] — Ss. 15 to 20 and 24 — Jurisdiction of court — Basis for determination — Determination of, based on "natural choice", "suitable choice" or "more appropriate choice" or number of cases filed/pending in a court — Held, question of jurisdiction is a pure question of law — *It needs to be adjudicated only on the basis of statutory provisions and not on considerations like quantum of filing of cases — However, such plea may constitute relevant basis for transfer of proceedings from one court to another, unless barred by any statute* (Paras 27 and 28). *State of Maharashtra* v. *Atlanta Ltd.*, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206: AIR 2014 SC 1093: (2014) 3 LW 81.

Bench Strength 2. Coram: *A.K. Patnaik* and **J.S. Khehar**, JJ. [Date of decision: 16-1-2014]

— Ss. 15 and 20 *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(1)(e), 34 & 42 and Ss. 15 & 20 CPC, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206

— Ss. 34 & 2(1)(e) and S. 15 CPC, (2014) 11 SCC 619

— S. 16 *See also* S. 15

[97] — S. 16 — Applicability of — Dispute, held, must be in relation to a claim of a right to or interest in immovable property — *Disputes over payment in relation to a works contract (highway construction contract) in a particular district by themselves did not amount to disputes which attract S. 16* (Para 25). *State of Maharashtra* v. *Atlanta Ltd.*, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206: AIR 2014 SC 1093: (2014) 3 LW 81.

Bench Strength **2**. Coram: *A.K. Patnaik* and **J.S. Khehar**, JJ. [Date of decision: 16-1-2014]

— Ss. 17 to 19 *See* S. 15

— S. 20 *See* S. 15

See also ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

[98] — S. 20 — Extent of choice available to plaintiff as to place of suing — Principles summarised — *Doctrines and Maxims — Dominus Litus*

A plain reading of Section 20 CPC arguably allows the plaintiff a multitude of choices in regard to where it may institute its lis, suit or action. Corporations and partnership firms, and even sole proprietorship concerns, could well be transacting business simultaneously in several cities. If Sections 20(*a*) and (*b*) are to be interpreted disjunctively from Section 20(*c*) CPC, as the use of the word "or" appears to permit the plaintiff to file the suit at any of the places where the cause of action may have arisen regardless of whether the defendant has even a subordinate office at that place. However, if the defendant's location is to form the fulcrum of jurisdiction, and it has an office also at the place where the cause of action has occurred, it has been held that the plaintiff is precluded from instituting the suit anywhere else. Obviously, this is also because every other place would constitute a *forum non conveniens*. The Supreme Court has harmonised the various hues of the conundrum of the place of suing in several cases and has gone to the extent of laying down that it should be courts' endeavour to locate the place where the cause of action has substantially arisen and reject others where it may have incidentally arisen. It has even been held that that if the defendant corporation has a subordinate office in the place where the cause of action arises, litigation must be instituted at that place alone, regardless of the amplitude of options postulated in Section 20 CPC. (Para 12). *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength **3**. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

Patel Roadways Ltd. v. Prasad Trading Co., (1991) 4 SCC 270; ONGC v. Utpal Kumar Basu, (1994) 4 SCC 711; South East Asia Shipping Co. Ltd. v. Nav Bharat Enterprises (P) Ltd., (1996) 3 SCC 443, affirmed

— S. 20(c) *See* S. 24

— S. 24 *See also* S. 15

[99] — Ss. 24 and 20(c) — Transfer of suit — *Two civil suits transferred from Panchakula to Yamunanagar — Ten suits already pending before the Civil Court at District Panchakula — Appellants not parties to injunction suits pending in Yamunanagar — Suits retransferred to Panchkula in the facts and circumstances of the case and in the interest of justice — Also directed that the injunction suits pending at Yamunanagar be transferred to the Civil Court at Panchkula — All cases to be disposed of expeditiously* (Paras 3 to 5). *Kali Charan* v. *Sudha Rani*, (2011) 15 SCC 199: (2014) 2 SCC (Civ) 355.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 10-1-2011]

[100] — S. 25 — Petition for transfer of MACT case — Transfer petition dismissed — Petitioners alleged that Court at Gautam Budh Nagar, U.P. has no jurisdiction — *Held, lack of jurisdiction is no ground for transfer of a case — Petitioners may apply for dismissal of case on the ground of lack of jurisdiction — Motor Vehicles Act, 1988, Ss. 166 and 168. Neha Arun Jugadar* v. *Palak Diwan Ji*, (2011) 15 SCC 222: (2012) 4 SCC (Cri) 576: (2014) 2 SCC (Civ) 358: AIR 2011 SC 1164: (2011) 3 CTC 663: (2011) 1 KLT 770: (2011) 112 Cut LT 384: (2011) 2 KCCR 1566: (2011) 4 LW 763.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 14-2-2011]

[101] — S. 25 — Transfer of suit — Matrimonial suit decreed ex parte and the application for setting it aside dismissed for default — Hence, present transfer petition being infructuous dismissed — *Petitioner can file fresh transfer petition if the matrimonial suit is restored to its original file* (Paras 4 and 5). *Gyanmati Yadav* v. *Ram Sagar*

Yadav, (2013) 14 SCC 621: (2014) 5 SCC (Civ) 683.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 11-9-2009]

— S. 33 *See also* S. 47

[102] — Ss. 33, 2(2) & (14) and Or. 20 — Void order affecting legal right of the party to suit i.e. appellant landlord herein — Failure of appellant to challenge such order — Effect of — Void order, reiterated, can create neither legal rights nor obligations — *Hence, appellant could not be denied his aforesaid right on ground that he did not choose to challenge the said void order — Hence original compromise decree restored and eviction directed in terms thereof — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 12(1)(a) and 13 — Evidence Act, 1872, S. 115* (Para 14). *Shivshankar Gurgar* v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

— Ss. 33 & 96 and Or. 20 — Contested decree based on concurrent findings of fact recorded by courts below — Interference with, by Supreme Court — Scope *See* CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP — Questions of Fact, Art. 136, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725

— S. 34 *See* S. 47

See also CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also INCOME TAX — 'Tax at Source/Deduction/TDS/TAS', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 171, (2013) 16 SCC 585: (2014) 5 SCC (Civ) 559

— S. 34 — Interest, right to *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Interest Act, 1978, S. 4(1), (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— Ss. 34 and 35 *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168, 171 and 173, (2014) 3 SCC 584: (2014) 2 SCC (Civ) 297

— Ss. 34, 47 and Or. 21 — Amount deposited in court — Liability of judgment-debtor to pay interest thereafter — If any *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 31(7)(a) & (b), 28(3) and 34, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

[103] — S. 34 proviso — Interest — Contractual rate — Money decree — Interest @ 30% p.a. on amount due charged as per terms of agreement between parties — Defendant always paid bills in which same rate of interest was charged — Held, contention that rate of interest was highly excessive cannot be accepted (Para 14). *TVC Skyshop Ltd.* v. *Reliance Communication & Infrastructure Ltd.*, (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234.

Bench Strength **2**. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 15-7-2013]

— S. 35 *See* Or. 7 R. 3; Or. 8 R. 1 proviso

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Delay/Speedy disposal, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 166, (2014) 2 SCC 735: (2014) 2 SCC (Civ) 192

[104] — S. 35 — Costs — Nature of — Held, costs should be real and compensatory and not merely symbolic — Exemplary costs can be awarded where appeal is devoid of merit (Para 14). *Punjab State Power Corpn. Ltd.* v. *Atma Singh Grewal*, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762: (2014) 3 LW 97.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and *A.K. Sikri*, JJ. [Date of decision: 17-9-2013]

[105] — S. 35 — Costs — Frivolous appeal — Imposition of costs, with direction to recover it from officer who authorised filing of appeal — Sustainability — "Responsible litigant" — Formulation of National Litigation Policy, 2010 with "mission/vision" to transform Government into efficient and responsible litigant, applauded — *However, anguish expressed that despite Government's own policy and reprimand from Supreme Court on various occasions there was no significant positive effect on various government officials who continued to file frivolous and vexatious appeals imposing unnecessary burden on courts, compelling opposite party who had succeeded in court below to incur avoidable expenditure, and causing delay in allowing successful litigant to reap fruits of judgment, since they were not personally affected, and costs imposed came from Government's coffers — Sense of responsibility would be drawn on such officers when they are personally made liable to pay costs instead of burdening the exchequer — However, clarified that such order of recovery of costs from officer concerned can be passed only where appeal is found to be ex facie frivolous and decision to file appeal is found palpably irrational and uncalled for — On facts held, direction by High Court to recover costs from officer concerned who had authorised filing of appeal, justified — Further costs of Rs 10,000 imposed* (Paras 12 to 15). *Punjab State Power Corpn. Ltd.* v. *Atma Singh Grewal*, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762: (2014) 3 LW 97.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and *A.K. Sikri*, JJ. [Date of decision: 17-9-2013]

[106] — S. 35 — Frivolous appeal — Imposition of costs against State — Sustainability — *Held, in view of crystal clear mandate in second proviso to R. 2.2(b), Punjab Civil Services Rules Vol. II which bars initiation of departmental enquiry more than 4 yrs after alleged act was committed, appeal filed against order of Single Judge of High Court quashing charge-sheet dt. 7-1-2008 for acts allegedly committed in 2002 was totally frivolous, and imposition of costs quantified at Rs 10,000, justified — Tendency of Government/PSUs to file frivolous appeals strongly deprecated* (Paras 5 to 9). *Punjab State Power Corpn. Ltd.* v. *Atma Singh Grewal*, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762: (2014) 3 LW 97.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and *A.K. Sikri*, JJ. [Date of decision: 17-9-2013]

P.P. Abubacker v. Union of India, AIR 1972 Ker 103, held, approved

45th Report, Law Commission of India (1973); 126th Report (1988) Law Commission of India, relied on

— Ss. 35, 35-A and 35-B *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— S. 35-B *See* Or. 7 R. 3; Or. 8 R. 1 proviso

— S. 47 *See also* Ss. 9; 148

[107] — S. 47 — Executing court cannot go behind decree (Para 18). *ONGC Ltd.* v. *Modern Construction & Co.*, (2014) 1 SCC 648: (2014) 1 SCC (Civ) 617: AIR 2014 SC 83: (2013) 6 CTC 77: (2013) 4 KLT 193: (2014) 104 ALR 36: (2014) 1 LW 177.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 7-10-2013]

[108] — Ss. 47, 34, 9, 33 and 51 and Or. 21 Rr. 10 and 30 — Power of executing court to go behind decree attaining finality — *On facts, respondents' execution petition for execution of the award and decree giving effect to enhanced compensation under the amended LA Act becoming a nullity — Held, a plea of nullity of a decree can always be set up before the executing court — Any judgment and order which is a nullity never acquires finality and is thus open to challenge in the executing proceedings — The execution petition filed by respondents seeking execution of the award and decree stands dismissed* (Paras 20 and 22). *State of Haryana* v. *Kartar Singh*, (2013) 11 SCC 375: (2014) 1 SCC (Civ) 527: (2013) 96 ALR 701: (2013) 122 AIC 232: (2013) 1 LW 675.

Bench Strength **2**. Coram: **R.M. Lodha** and *Anil R. Dave*, JJ. [Date of decision: 29-11-2012]

Balvant N. Viswamitra v. Yadav Sadashiv Mule, (2004) 8 SCC 706; National Agricultural Coop. Mktg. Federation of India Ltd. v. Union of India, (2003) 5 SCC 23, distinguished on facts

— Ss. 47, 51 and Or. 21 R. 10 *See* CONSTITUTION OF INDIA, Arts. 26 and 136, (2014) 11 SCC 465: (2014) 4 SCC (Civ) 142

[109] — S. 47 and Or. 21 & Or. 23 R. 3 — Jurisdiction and powers of executing court — Scope — Cannot modify decree — *Reiterated, executing court must execute the decree as it is — It cannot go beyond the decree and has no jurisdiction to modify the same — Time fixed under compromise decree for payment of arrears of rent pursuant to compromise agreement between the parties concerned — Extension of, by executing court, held, virtually amounted to modification of decree — Thus, said order of executing court was without jurisdiction and therefore a nullity — Hence original compromise decree restored and eviction directed in terms thereof — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 12(1)(a) and 13* (Para 13.2). *Shivshankar Gurgar* v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

Deepa Bhargava v. Mahesh Bhargava, (2009) 2 SCC 294: (2009) 1 SCC (Civ) 505, followed

[110] — S. 47 and Or. 23 R. 3 — Compromise decree — Enforceability of — Grounds on which may be challenged — Reason(s) why opposite party entered into compromise, held, are irrelevant — *Flouting of compromise decree by judgment-debtor on ground that his opponent entered into the compromise in view of serious dispute as to maintainability of his claim — Held, judgment-debtor cannot flout the compromise decree on such a ground — Reasons which compelled the opponent to enter into the compromise are irrelevant as to its enforceability, if otherwise the compromise is validly entered into — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 12(1)(a) and 13* (Para 12). *Shivshankar Gurgar* v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

— S. 51 *See* S. 47

See also NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[111] — S. 51 — Arrest and detention to enforce compliance with court order imposing financial liability — Objective and effect of — Re-arrest

and repeated detention to enforce — Permissibility — *Held, purpose of sending a person to jail to ensure compliance with a financial liability must be understood as being a manner, procedure or device, for the satisfaction of the liability — Arrest and detention is only to coerce compliance — The liability to pay would stand discharged only by actual payment of the amount due — Remaining in jail would not discharge the liability to pay — Thus, held, in the present case, till the orders dt. 31-8-2012 and 5-12-2012 imposing a liability of almost Rs 37,000 crores on the Sahara Companies are given effect to in letter and spirit, the process of enforcing compliance shall have to go on -The petitioner may be released from judicial custody if he complies with the bail order dt. 26-3-2014 which required deposit of Rs 5000 crores in cash and Rs 5000 crores' bank guarantee — That would however not excuse the petitioner from making the balance payment of about Rs 27,000 crores (with the mounting interest) in terms of the orders dt. 31-8-2012 and 5-12-2012, even if it means the re-arrest of the petitioner again and again, for the purpose of compliance with the Supreme Court's orders. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405: 1989 SCC (Cri) 171, followed

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), affirmed

***Applied in** SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 8 SCC 751*

[**Ed.**: The Supreme Court in the present case, before coming to the conclusion as to the validity or otherwise of the impugned detention order dated 4-3-2014, made a detailed study of all the efforts that were made by the Supreme Court to cajole the contemnors, including the petitioner Subrata Roy Sahara, for compliance with the orders of the Supreme Court dated 31-8-2012 and 5-12-2012. *See* paras 45 to 58.]

[112] — S. 51 — Arrest and detention to enforce compliance with court order imposing financial liability — Preconditions for imposition of such order as laid down in S. 51 proviso — *If all preconditions need to be satisfied for order of arrest and detention — Held, satisfaction of* ***any one*** *of the preconditions is enough to order arrest and detention. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Ss. 51, 55 & 58 and Or. 21 R. 30 *See* PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— S. 51 proviso and Or. 21 Rr. 37 and 40 *See* SECURITIES, MARKETS AND EXCHANGES — 'Securities and Exchange Board of India Act, 1992', Ss. 15-Y, 11(3) and 15-U, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[113] — S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37 — Arrest and detention to enforce compliance with court order imposing financial liability — Preconditions for imposition of such order as laid down in S. 51 proviso — If satisfied — Determination of — Materials that may be relied on — Previous court orders directing party concerned not to jump jurisdiction/abscond — Balance sheet of party concerned — Information available on official website of party concerned — *Evidence Act, 1872, S. 65-B — Information Technology Act, 2000, S. 4. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360, distinguished on facts

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), affirmed

[114] — S. 51 proviso (a)(ii) — Dishonest transfer, concealment or removal of property or any other act of bad faith in relation to property — Inference of — Basis for — *Held, since a farcical explanation was tendered by the two Sahara companies in respect of receipt, payment and transfer of thousands of crores of rupees by way of cash, without reference to any banking transactions whatsoever, it was legitimate to infer dishonest transfers, as well as bad faith, on behalf of the contemnors. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— S. 51(b) *See* S. 51 provisos (a)(i) & (b)

— S. 89 *See also* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— S. 89 — Reference of disputes on mutual consent of parties *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 4, 8, 7 and 11(6), (2014) 7 SCC 352: (2014) 3 SCC (Civ) 704

— **S. 89(1)(a)** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 7, 8, 11 and 2(b), (2014) 11 SCC 148: (2014) 4 SCC (Civ) 33

— **S. 96** *See* Or. 41 R. 1; Or. 41 R. 27(1)(aa); Or. 47 R. 1

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 173, 168 and 166, (2013) 11 SCC 517: (2014) 1 SCC (Civ) 603

— **S. 96 — Appeal — Delay/Laches/Limitation** *See* LIMITATION — 'Limitation Act, 1963', S. 5, (2011) 15 SCC 225: (2014) 2 SCC (Civ) 360

[115] — S. 96 — First appeal — Nature and scope — Proper mode for disposal of — Duty of first appellate court — *Reiterated, first appeal is a valuable right of appellant and therein all questions of fact and law decided by trial court are open for reconsideration — Where High Court (as first appellate court) finds trial court judgment to be unsatisfactory and wants to set aside the judgment, it ought to carefully examine facts and law and give cogent reasons for setting aside such judgment — In first appeal, High Court needs to decide questions of fact and law comprehensively by giving full-dressed hearing — Herein, while deciding first appeal under S. 96, High Court allowed the appeal and set aside judgment and decree of trial court without properly examining facts and law — Held, High Court did not follow the settled legal position (related to first appeal, as aforementioned) — Consequently, impugned judgment set aside and matter remitted to High Court for consideration afresh in accordance with law — Parties directed to maintain status quo till disposal of appeal by High Court* (Paras 3 to 8). *B.M. Narayana Gowda* v. *Shanthamma*, (2011) 15 SCC 476: (2014) 2 SCC (Civ) 619: AIR 2012 SC Supp 264: (2012) 113 Cut LT 117: (2012) 90 ALR 214.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 20-4-2011]

Sanjay Singh Rawat v. National Small Industries Corpn. Ltd., (2005) 12 SCC 146; H.K.N. Swami v. Irshad Basith, (2005) 10 SCC 243; Rama Pulp & Papers Ltd. v. Maruti N. Dhotre, (2005) 12 SCC 186, followed

[116] — Ss. 96, 10 and 11 — Disposal of appeals in counter-suits in which the rights to be adjudicated are the same — Proper mode of disposal — Need for consistent findings in both appeals — *Issue in one suit (filed by respondents) was of title to suit property, in which J succeeded in establishing that she was absolute/paramount owner thereof and respondents had no right, title or interest therein — Issue in the other suit (filed by J) was whether based on her absolute title to the said property, J could be granted a mandatory injunction for eviction of respondents, who were in permissive possession of part of suit property — Mandatory injunction was granted to J — However, in appeals filed by respondents in both suits, High Court upholding in one appeal that J had absolute title to suit property, but in the other appeal setting aside mandatory injunction on ground that J's title was disputed — Held, course adopted by High Court is impermissible — Once J established her title in one suit, and this finding was found valid by in appeal, mandatory injunction in the other suit for eviction of respondents could not be denied — Mandatory injunction decree, restored — Specific Relief Act, 1963, S. 39 — Easements Act, 1882, Ss. 60, 61 and 63. Gowri* v. *Shanthi*, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250: AIR 2014 SC 2863: (2014) 107 ALR 106.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 31-3-2014]

Shanthi v. Gowri, First Appeal No. 1173 of 2004, decided on 24-8-2011 (Mad), affirmed

Shanthi v. Jagadambal, First Appeal No. 1175 of 2004, decided on 25-8-2011 (Mad), modified

[117] — Ss. 96 & 100 and Or. 41 R. 33 — Relief — Subsequent events — Moulding of relief — Appellate court has power to mould relief taking into consideration subsequent developments when the same have direct bearing on relief claimed or on entire purpose of suit

In ordinary course of litigation, the rights of parties are crystallised on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 CPC is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or on the entire purpose of the suit, the courts taking note of the same should mould the relief accordingly. When the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice. Even the Supreme Court while exercising its powers under Article 136 of the Constitution can take note of subsequent events. (Paras 48, 52 and 53). *Gaiv Dinshaw Irani* v. *Tehmtan Irani*, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318: AIR 2014 SC 2326: (2015) 1 Mah LJ 228.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-4-2014]

Tehmtan v. Municipal Corpn. of Greater Bombay, (2005) 6 Bom CR 808, affirmed

— S. 96 and Or. 12 R. 6 — Re-appreciation of pleadings and evidence by appellate court — Reversal of findings of trial court *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 10, 19(b) and 20, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

[118] — S. 96 and Or. 41 Rr. 4 & 20 and Or. 1 Rr. 3 & 4 — First appeal — Multiple respondents — Manner and mode of disposal — Suit for specific performance against four persons — *Dismissed by trial court — High Court admitted appeal against one respondent and dismissed the same against three — Held, High Court was not justified in piecemeal disposal of the appeal — It should have disposed of the appeal by simultaneously deciding all the issues raised by the parties — Matter remitted for decision afresh. Govindappa* v. *R. Mariyappa*, (2013) 14 SCC 618: (2014) 5 SCC (Civ) 682.

Bench Strength **3**. Coram: *B.N. Agrawal, B. Sudershan Reddy* and *G.S. Singhvi*, JJ. [Date of decision: 6-4-2009]

[119] — S. 96 and Or. 41 R. 31 — First appeal — Multiple issue case — Proper procedure for deciding — Held, decision on all issues is necessary, and decision must be supported by evidence — *Deciding of first appeal by High Court after elaborately dealing with only one issue raised by one of the parties, and omission to make reference to pleadings of other parties, held, contrary to the requirement of Or. 41 R. 31 — Moreover, finding reached by High Court on reappreciation of evidence that appellant-plaintiff was not willing and ready to perform his part of contract, held, was contrary to evidence on record and, therefore, perverse — Hence, set aside*

The High Court while deciding the first appeal filed under Section 96 CPC, did not consider all the issues as is required under Order 41 Rule 31 CPC. On the other hand, it dealt with only one issue elaborately, without making any reference to the pleadings taken by the parties. On reappreciation of evidence it reached the conclusion that the appellant-plaintiff was not willing and ready to perform his part of the contract, and was resorting to dilatory tactics, that R-1 had entered into two agreements to sell with Respondents 3 and 7. That therefore, there was no occasion to examine the other issues, particularly those with respect to whether the other respondents were bona fide purchasers for consideration without notice. (Paras 17, 17.7 and 17.8)

The plaint contained a specific averment as to the appellant-plaintiff's readiness and willingness to perform his part of the suit agreement and that it was R-1 who evaded to perform her part of the suit agreement. In the written statement R-1 simply denied the said averment. In replication, the plaintiff averred that he was a big businessman having a turnover of above Rs five lakhs per year and could always raise necessary finances to complete the sale transaction. (Paras 18 to 20)

The appellant-plaintiff examined himself as PW 1, and in his cross-examination he denied any suggestion made to him to the effect that he had ever informed the power-of-attorney holder of R-1 that he would be unable to raise the balance of the sale consideration. Nor had he ever told Defendant 7 that he wanted to sell the agricultural land to raise money to purchase the suit property. No question was put to him in the cross-examination, in response to which he could establish that he was a man of means, which he had thus stated in the replication. (Para 21)

The allegation made in the written statement that the appellant-plaintiff had told R-1 that she was free to sell the land, was not established by leading any evidence. Additionally, R-1 lives in USA. It is nobody's case that the appellant-plaintiff had any communication with her. PW 2 and PW 3 fully supported his case. Thus, the finding recorded by the High Court on this issue is perverse being contrary to the evidence on record. (Para 22). *S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23: AIR 2013 SC Supp 265: (2013) 98 ALR 241: (2013) 125 AIC 25.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 10-4-2013]

[120] — S. 96(3) and Or. 23 R. 3 — Compromise decree — Appeal — Bar under S. 96(3) — Applicability — *When one party sets up a compromise but the other party disputes the same requiring the court to adjudicate dispute on merits, decree passed by court on basis of its enquiry would not amount to consent decree and hence would be appealable — Accordingly, appeal preferred against trial court's decree, maintainable — Words and Phrases — "Consent decree" and "compromise decree"*

The defendants had raised a dispute with regard to the validity of the compromise and the court concerned had conducted an enquiry. Thus, a decree had been passed on the basis of the compromise based on that enquiry and, therefore, it cannot be said to be a consent decree. The decision in *Pushpa Devi Bhagat*, (2006) 5 SCC 566, has to be understood that when a decree is passed without any dispute being raised or contested in the court of first instance, the decree being passed on consent cannot be appealed against. As the present controversy is covered by the decision rendered in *Kishun*, (2005)

6 SCC 300, it is not necessary to dwell upon the applicability of Order 43 Rule 1-A CPC. (Para 18)

In the present case, the trial court had discussed the evidence while dealing with the dispute raised by the defendants in the suit pertaining to the entering of a compromise. The first appellate court on analysis of evidence dismissed the appeal. In the second appeal, the High Court at the commencement of the judgment, adverted to the facts relating to the manner in which the compromise decree had been passed and opined that the enquiry conducted by the trial Judge related to the evidence brought on record had been rested on proper application of oral and documentary evidence. On the aforesaid analysis, the High Court has concurred with the conclusion of the first appellate court that the decree in question was a consent decree. As the High Court, after stating the facts and referring to the documents by which it has been recorded and further taking note of the fact how the settlement had been acted upon by both the parties, has expressed its opinion, it cannot really be found fault with. Therefore, there is no substance in the contention that the High Court has really not dwelled upon the perversity of approach of the courts below and cryptically given the stamp of approval to the conclusion. *Daljit Kaur* v. *Muktar Steels (P) Ltd.*, (2013) 16 SCC 607: (2014) 5 SCC (Civ) 570: (2014) 1 CTC 105: (2014) 1 LW 70: (2014) 118 Cut LT 299: (2014) 102 ALR 275: (2014) 133 AIC 253.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 19-11-2013]

Kishun v. Behari, (2005) 6 SCC 300, applied

Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566, explained and distinguished

Hind Re-Rolling Industries v. Muktar Steels (P) Ltd., (2013) 4 ALD 500: 2013 AIR CC 2577, affirmed

— **S. 100** *See* Or. 7 R. 3; Or. 7 R. 8; Or. 21 R. 89; Or. 22 R. 3; S. 96

See also TENANCY AND LAND LAWS — 'U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951)', S. 331(4), (2012) 13 SCC 281: (2014) 5 SCC (Civ) 633

[121] — S. 100 — Scope of High Court's jurisdiction in second appeal — Reiterated, a second appeal would not entail the determination of questions of fact but must conform to the discipline of only considering questions of law of substantial importance (Para 8). *Baldev Krishan* v. *Satya Narain*, (2013) 14 SCC 179: (2014) 2 SCC (Civ) 443: (2013) 101 ALR 274: (2013) 131 AIC 132.

Bench Strength **2**. Coram: *T.S. Thakur* and **Vikramajit Sen**, JJ. [Date of decision: 27-8-2013]

[122] — S. 100 — Scope of jurisdiction of High Court in second appeal — More substantial questions of law framed at the time of hearing — Held, cannot be framed without giving opportunity to parties to lead evidence

In a second appeal, the High Court can exercise jurisdiction only on the basis of substantial question of law framed at the time of admission. But in the present case, it framed more issues at the time of hearing without giving any opportunity to the parties to lead their respective evidence. (Para 18). *Jogendra Ram* v. *Phullan Mian*, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370: (2012) 91 ALR 905: (2012) 112 AIC 111.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 1-12-2011]

Phullan Mian v. Jogendra Ram, AIR 2006 Pat 183, reversed

[123] — S. 100 — Finding of fact — Reappreciation of evidence and interference with finding of fact ignoring the question of law, held, is not permissible in second appeal

In a second appeal the reappreciation of evidence and interference with the finding of fact ignoring the question of law is not permissible but such interference has been made by the impugned judgment. (Para 18). *Jogendra Ram* v. *Phullan Mian*, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370: (2012) 91 ALR 905: (2012) 112 AIC 111.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 1-12-2011]

Harjeet Singh v. Amrik Singh, (2005) 12 SCC 270, relied on

Phullan Mian v. Jogendra Ram, AIR 2006 Pat 183, reversed

[124] — S. 100 — High Court's interference in second appeal with first appellate court's findings of fact — When not justified — *High Court in second appeal not justified in interfering with findings of fact of first appellate court, without setting aside the same on merits, merely on ground that alternative plea taken by plaintiff was contradictory to principal plea — Suit for possession based on plea that defendants, being licensees whose licence stood terminated, were liable to vacate premises — Defendants took logical defence that they were tenants — Plaintiff took alternative plea that even under Rent Control Act defendants were liable to be evicted — Whether relationship between parties was of licensor and licensee or landlord and tenant — Question of fact — Trial court dismissed suit — But first appellate court on reappreciation of totality of evidence on record recorded finding of fact that defendants were licensees and accordingly decreed suit — First appellate court's decree of*

eviction, restored. Praful Manohar Rele v. *Krishnabai Narayan Ghosalkar*, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103: (2014) 1 CTC 402: (2014) 102 ALR 660: (2014) 134 AIC 65.

Bench Strength **2**. Coram: **T.S. Thakur** and *Vikramajit Sen*, JJ. [Date of decision: 3-1-2014]

J.J. Lal (P) Ltd. v. M.R. Murali, (2002) 3 SCC 98, applied

Krishnabai Narayan Ghosalkar v. Manohar Narayan Rele, Second Appeal No. 90 of 1992, decided on 16-10-2009 (Bom), reversed

[125] — S. 100 — Interference with concurrent findings of trial court and first appellate court by High Court in second appeal — When justified — Perverse findings of fact — *Concurrent findings of courts below based on wrong assumption of facts, non-appreciation of pleadings and evidence on record and wrong placement of burden of proof on defendant instead of on plaintiff — High Court framed substantial questions on basis of law laid down by Supreme Court and answered the same by recording cogent and valid reasons to annul concurrent findings of courts below as perverse and arbitrary — Held, interference with concurrent findings justified. Sebastiao Luis Fernandes* v. *K.V.P. Shastri*, (2013) 15 SCC 161: (2014) 5 SCC (Civ) 180: (2014) 102 ALR 871: (2014) 2 LW 512.

Bench Strength **3**. Coram: *G.S. Singhvi*, **V. Gopala Gowda** and *Chockalingam Nagappan*, JJ. [Date of decision: 10-12-2013]

Hira Lal v. Gajjan, (1990) 3 SCC 285, applied

Hero Vinoth v. Seshammal, (2006) 5 SCC 545, followed

Krishna Venctexa Porob Shastri v. Sebastiao Luis Fernandes, Second Appeal No. 30 of 1986, decided on 14-9-1998 (Bom), affirmed

[126] — S. 100 — Perverse finding of High Court in second appeal — *Trial court granted injunction restraining respondent-defendants from dispossessing appellant-plaintiff from suit land which was in adverse possession of plaintiff — But it refused to grant decree of plaintiff's ownership of suit land by adverse possession — Decree pertaining to preventive injunction not challenged by defendants and thus same became final — But appellant filed first appeal against refusal to grant declaration of plaintiff's ownership by adverse possession — While dismissing appeal, first appellate court also observed that absence of respondent-defendants' appeal indicated respondents' acceptance of appellant's adverse possession — In second appeal, High Court, while denying relief of ownership by adverse possession, denied injunction earlier granted, by observing that owner of suit land being Gram Panchayat and appellant being in possession thereof without any right, it had no right to seek injunction against Gram Panchayat — Held, this finding of High Court was perverse, unnecessary and beyond scope of second appeal when respondents, by not challenging decree pertaining to injunction, had accepted adverse possession of suit land* (Paras 8 and 10). *Gurdwara Sahib* v. *Gram Panchayat Village Sirthala*, (2014) 1 SCC 669: (2014) 1 SCC (Civ) 630: (2014) 4 Mah LJ 74: (2014) 3 MPLJ 36.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **A.K. Sikri**, JJ. [Date of decision: 16-9-2013]

Gurudwara Sahib v. Gram Panchayat, Village Sirthala, RSA No. 2823 of 2011, decided on 22-9-2011 (P&H), partly reversed with clarification

[127] — S. 100 — Question of fact on which no issue framed — Decision on — If proper — Held, whether a proceeding was collusive, being a question of fact, cannot be considered in second appeal on which no issue framed

The question whether a proceeding was collusive or not is essentially a question of fact, and it cannot be considered in a second appeal, but by the impugned judgment the High Court decided such questions though there was no such issue framed. (Para 18)

In a second appeal the reappreciation of evidence and interference with the finding of fact ignoring the question of law is not permissible but such interference has been made by the impugned judgment. (Para 18). *Jogendra Ram* v. *Phullan Mian*, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370: (2012) 91 ALR 905: (2012) 112 AIC 111.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 1-12-2011]

Phullan Mian v. Jogendra Ram, AIR 2006 Pat 183, reversed

[128] — S. 100 — Second appeal — Concurrent findings of facts — Interference with — Reappreciation of evidence in second appeal — Permissibility — *Held, findings recorded by trial court as well as lower appellate court did not suffer from any error what to say of the same being perverse — Hence, High Court was not justified in reversing the concurrent judgments and decrees of courts below — Concurrent findings of facts — Interference with — Scope of* (Para 10). *Azrath Bivi* v. *Chinnathambi*, (2013) 14 SCC 608: (2014) 5 SCC (Civ) 677: (2010) 78 ALR 681.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and *Dr M.K. Sharma*, JJ. [Date of decision: 16-9-2009]

[129] — S. 100 — Second appeal — Finding of fact — Interference with — Perverse findings — *No embargo on High Court to entertain second appeal on question of fact in exceptional circumstances where factual findings are found to be perverse — In present case findings of trial court*

and first appellate court being perverse, High Court erred in not interfering. Rajasthan SRTC v. *Bajrang Lal*, (2014) 4 SCC 693: (2014) 2 SCC (L&S) 97: (2014) 2 SCC (Civ) 721: (2014) 5 Mah LJ 233: (2014) 3 MPLJ 506: (2014) 5 LW 144: (2014) 2 Cal LJ 124.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *Jasti Chelameswar*, JJ. [Date of decision: 14-3-2014]

Suwalal Chhogalal v. CIT, (1949) 17 ITR 268 (Nag), held, approved

[130] — S. 100 — Second appeal — High Court's interference in second appeal with findings of fact of first appellate court — Not justified if findings were arrived at by first appellate court without ignoring any evidence, misconstruing any document or acting perversely

The appellant is a consumer of electricity. A backbilling notice claiming penalty being electricity charges for preceding six months was issued to him by the respondent on ground of tampering with the meter and M&T seals installed in his premises. The appellant filed a suit seeking a declaration that the notice was null and void. The suit was dismissed by the trial court. But the first appellate court, on examination of evidence in detail rendered findings of fact that the appellant had not tampered with the M&T seals or the meter, that someone else in the defendants' Department, to teach a lesson to the appellant, as he dared to complain against the meter-reader, had deliberately tampered with the M&T seals and then gave a complaint to the Vigilance so that the Vigilance could inspect the installation and attribute the tampering to the appellant. Accordingly, the first appellate court set aside the demand notice and allowed the appellant's appeal. But the High Court in second appeal preferred by the respondent took the view that there was no material to show that the inspecting officers had made any false statements about checking of the electrical connection and about the tampering of M&T seals; and as they were responsible officers, their evidence ought not to have been disbelieved by the first appellate court. Accordingly, the High Court reversed the decision of the first appellate court and restored the dismissal of the suit ordered by the trial court.

Allowing the appeals,

Held :

The first appellate court, which is the final court of fact had analysed the evidence in detail and thereafter recorded the aforesaid findings of fact on the basis of which it decreed the suit. It is therefore not a case where the first appellate court had ignored any evidence or misconstrued any document or acted perversely. It had only held that the tampering was not done by the appellant, but in all probability done by the meter-reader or someone from the defendants' Department to settle scores with the appellant. Having regard to the evidence and the findings of fact recorded by the appellate court, there was no justification for the High Court to interfere with the findings of fact recorded by the first appellate court, in exercise of its jurisdiction under Section 100 CPC. (Paras 7 and 8). *S.C. Jindal* v. *UHBVNL*, (2011) 15 SCC 117: (2014) 2 SCC (Civ) 260: AIR 2011 SC Supp 516: (2011) 112 Cut LT 117.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 7-1-2011]

[131] — S. 100 — Second appeal — Interference by High Court without formulation of substantial question of law — Impermissibility — *Reiterated that second appellate court has no jurisdiction to admit or decide second appeal without formulating substantial question of law at initial stage which is a sine qua non for exercising jurisdiction under S. 100 — Impugned judgment reversing judgment and decree passed by trial court as affirmed by first appellate court without framing any substantial question of law unsustainable and liable to be set aside* (Paras 15 to 20). *Balwinder Singh* v. *National Fertilizers Ltd.*, (2014) 13 SCC 277: (2014) 5 SCC (Civ) 706: (2014) 3 Cal LJ 1.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *V. Gopala Gowda*, JJ. [Date of decision: 7-7-2014]

National Fertilizers Ltd. v. Balwinder Singh, RSA No. 3127 of 2003, order dated 2-8-2011 (P&H), reversed

[132] — S. 100 — Second appeal — Interference with concurrent finding of fact — Scope — *Law reiterated that no interference to be made by High Court with concurrent finding(s) of fact recorded by lower courts unless perverse*

It is well settled that the High Court should not interfere with a concurrent finding of fact unless it is perverse. In the present case, there is no such perversity in the concurrent finding of fact returned by the courts below warranting the High Court's interference. Therefore, the High Court was wrong in setting aside the concurrent finding of fact recorded by the courts below that the respondent tenant had denied the title of the appellant landlady. The present case is covered by Section 12(1)(*c*) of the M.P. Act. The impugned judgment of the High Court is set aside and eviction decree passed by the trial court and confirmed by the first appellate court under Section 12(1)(*c*) of the M.P. Act is restored. (Paras 9, 20 and 21). *Keshar Bai* v. *Chhunulal*,

(2014) 11 SCC 438: (2014) 4 SCC (Civ) 127: AIR 2014 SC 1394.

Bench Strength 2. Coram: **Ranjana P. Desai** and *Jasti Chelameswar*, JJ. [Date of decision: 7-1-2014]

Deep Chandra Juneja v. Lajwanti Kathuria, (2008) 8 SCC 497; Yash Pal v. Ram Lal, (2005) 12 SCC 239; Firojuddin v. Babu Singh, (2012) 3 SCC 319: (2012) 2 SCC (Civ) 142, followed

Chhunulal v. Kesharbai, (2011) 2 MPLJ 180, reversed

[133] — S. 100 — Second appeal — Interference with findings of fact — Findings of fact of first appellate court, being last court of facts, based on relevant evidence — Interference with, by High Court in second appeal, held, not justified (Paras 11 and 13). *Ganeshi* v. *Ashok*, (2011) 15 SCC 417: (2014) 2 SCC (Civ) 605: AIR 2011 SC 1340: (2011) 2 Cal LJ 121: (2012) 113 Cut LT 279: (2011) 86 ALR 482: (2011) 101 AIC 118: (2011) 5 LW 54: (2011) 3 Cal LT 35.

Bench Strength 2. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 4-4-2011]

[134] — S. 100 — Second appeal — Maintainability — High Court deciding second appeal on merits without formulating substantial question of law, held, unsustainable — *High Court directed to frame substantial question of law and dispose of matter expeditiously* (Paras 2 to 4). *Pramilla* v. *Seema Agarwal*, (2011) 15 SCC 486: (2014) 2 SCC (Civ) 622.

Bench Strength 2. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 5-5-2011]

Gurdev Kaur v. Kaki, (2007) 1 SCC 546, followed

[135] — S. 100 — Second appeal — Non-interference with concurrent findings of trial court and first appellate court on proper analysis of lower court's approach — *Trial court decided dispute on proper appreciation of oral and documentary evidence and passed decree — First appellate court on proper appreciation of evidence dismissed appeal — High Court by stating facts and referring to relevant documents, on proper analysis, held, justified in dismissing second appeal — Contention that High Court failed to dwell upon perversity of approach of courts below, on facts, without substance. Daljit Kaur* v. *Muktar Steels (P) Ltd.*, (2013) 16 SCC 607: (2014) 5 SCC (Civ) 570: (2014) 1 CTC 105: (2014) 1 LW 70: (2014) 118 Cut LT 299: (2014) 102 ALR 275: (2014) 133 AIC 253.

Bench Strength 2. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 19-11-2013]

Hind Re-Rolling Industries v. Muktar Steels (P) Ltd., (2013) 4 ALD 500: 2013 AIR CC 2577, affirmed

[136] — S. 100 — Second appeal — Omission by High Court to frame substantial question of law — *High Court setting aside judgment and decree of first appellate court without framing substantial question of law — Held, judgment of High Court in such a case not sustainable — Hence, set aside — However, having regard to well-reasoned judgment of first appellate court, that judgment upheld without remitting the matter to High Court for consideration afresh* (Paras 12 to 16). *Amar Nath* v. *Kewla Devi*, (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85.

Bench Strength 2. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 22-4-2014]

Kewla Devi v. Amar Nath, Second Appeal No. 283 of 2005, decided on 8-4-2005 (All), reversed

[137] — S. 100 — Second appeal — Proper mode of disposal — Opportunity of hearing to parties to address on substantial question of law formulated by High Court before proceeding with appeal, where no such question of law formulated in memo of appeal — Necessity and purpose of — *Held, when any substantial question of law is formulated by Court, then as a necessary consequence thereto, parties have to be apprised of said question(s) and thereafter given an opportunity of hearing to advance arguments on said question(s) — Further held, very purpose of such exercise is to grant opportunity to other side to come prepared to address on that question of law — In instant case, since High Court had failed to grant such opportunity, matter remanded to High Court for consideration afresh*

The issue before the Court was where no substantial question of law is formulated in the memo of appeal, and the High Court formulates the same, whether the parties should be made aware of the said questions of law, and thereafter should they further be given an opportunity of hearing on such questions of law or not, or straightaway the court can proceed to decide the same.

Remanding the matter to the High Court,

Held :

After the amendment of Section 100 CPC it was not only obligatory but mandatory for the appellants to have formulated substantial questions of law in the memo of appeal. However, the proviso appended to Section 100 gives power to the Court to formulate its own substantial questions of law, if after going through the record, it feels so. But, when any substantial question of law is formulated by the court, then as a necessary consequence thereto, parties have to be apprised of the said questions of law and thereafter they should be given an opportunity of hearing to advance the arguments on the said questions of law. The very purpose of formulation of substantial question of law is to grant an opportu-

nity to the other side to come prepared to address on that question of law. In the absence of any question of law, the counsel may not be aware as to which substantial question of law he is required to address the court. The formulation is necessary to cut short the lengthy arguments that may be advanced by the parties. In the instant case, such procedure not having been followed by the Single Judge, matter remanded to the High Court for deciding it afresh on merits and in accordance with law. The High Court, while considering the second appeal, would also give an opportunity to both the parties to suggest as to which substantial questions of law would arise. (Paras 17, 18, 21 and 23 to 27). *Amar Singh* v. *Dalip Singh*, (2012) 13 SCC 405: (2014) 5 SCC (Civ) 647.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 25-1-2012]

Ganpat v. Ram Devi, AIR 1978 P&H 137, held, overruled

[138] — S. 100 — Second appeal — Proper mode of disposal of — Framing of substantial question of law and then deciding the same — *In the present case, though substantial question of law had been framed but not decided — Hence, matter remanded to High Court to decide the same in accordance with law after giving opportunity of hearing to parties* (Paras 2 and 3)

Appeal allowed by the Supreme Court held as above. *Satyendra Kumar* v. *Mast Ram Uniyal*, (2013) 14 SCC 367: (2014) 2 SCC (Civ) 684.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and *Dr B.S. Chauhan*, JJ. [Date of decision: 14-5-2009]

[139] — S. 100 — Second appeal — Substantial question of law — Formulation of — Grounds in memorandum of appeal treated as substantial questions of law — *On examination found that grounds in memo of appeal did not specify substantial questions of law — On its part, High Court did not frame any substantial question of law — Hence, matter remitted to High Court — Directed to first consider whether any substantial question of law arises or not. Parul Bala Ghosh* v. *Bishnu Pada Ghosh*, (2013) 14 SCC 617: (2014) 3 SCC (Civ) 511.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 23-2-2009]

[140] — S. 100 — Second appeal — Substantial question of law — Framing of — Mandatory — *Trial court decreed the suit and declared that order passed by the Collector for redemption of the mortgage was a nullity — Lower appellate court dismissed the appeal and confirmed the decree — Learned Single Judge, held, could not reverse the decrees of lower courts in second appeal without framing any substantial question of law — Second appeal remitted to High Court. Mehar Singh* v. *Sawan Singh*, (2013) 14 SCC 611: (2014) 5 SCC (Civ) 679.

Bench Strength **3**. Coram: *B.N. Agrawal, G.S. Singhvi* and *Dr M.K. Sharma*, JJ. [Date of decision: 16-4-2009]

[141] — S. 100 — Second appeal — Substantial question of law — Non-consideration of question regarding alienation of property in violation of injunction thereagainst, before return of plaint to proper court — Impropriety of — *Held, execution of sale deed during currency of temporary injunction restraining alienation prima facie amounted to/appeared to be a nullity — High Court ought to have considered this issue as a substantial question of law — Hence, matter remanded for reconsideration of High Court — CPC, 1908, Or. 7 R. 10, Or. 39 R. 1, 2 & 2-A — Contract Act, 1872, S. 23 — Transfer of Property Act, 1882, Ss. 52 and 54*

The respondent-plaintiff filed a suit for declaration that he was owner of suit property by virtue of the sale deed executed in his favour by *B*. But his title became doubtful by judgment and decree passed in Title Suit No. 13/1977 filed by predecessor of the appellant-defendants. In that suit it was mainly contested that the sale deed executed in favour of the respondent-plaintiff was in contravention of the temporary injunction passed in another civil suit bearing No. 49/1970. The trial court dismissed the suit of the respondent-plaintiff whereas the lower appellate court opined that as the plaint in suit No. 49 of 1970 was returned for presentation before proper court, the injunction order did not survive. Hence the sale deed cannot be castigated. Thus, it decreed the suit of the respondent-plaintiff. In second appeal, the High Court dismissed the appeal holding that no substantial questions of law arose for consideration. Hence, the present appeal.

Allowing the appeal,

Held :

A suit is deemed to have been filed on the date of presentation of plaint before the competent court but the same did not have any bearing on the question relating to legality of sale deed dated 9-11-1973 executed by *B* during the currency of an order of injunction passed by the Munsif on 6-5-1971. It was not in dispute that as on 9-11-1973 i.e. the date on which the sale deed was executed, the order of injunction passed by the trial court in Suit No. 49 of 1970 was operative. It was also not in dispute that the order of injunction remained effective till 1976 when the plaint had been returned for

presentation before the competent court. In other words, till the refiling of the plaint, the order of injunction passed by the Munsif in Suit No. 49 of 1970 restraining the defendants from alienating the suit property was in force and *B* could not have executed the sale deed in favour of the respondent-plaintiffs herein. (Para 9)

In each of the cases enumerated under Section 23 of the Contract Act, 1872, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent-Plaintiff 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful. (Para 13)

It must be held that one of the questions of law raised in the second appeal filed by the appellant-defendants was a substantial question of law within the meaning of Section 100(1) CPC and the Single Judge committed serious error by summarily dismissing the second appeal. (Para 12). *Jehal Tanti* v. *Nageshwar Singh*, (2013) 14 SCC 689: (2014) 3 SCC (Civ) 512: AIR 2013 SC 2235: (2013) 100 ALR 842: (2013) 3 Cal LJ 66.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.A. Bobde*, JJ. [Date of decision: 18-4-2013]

Amar Chand Inani v. Union of India, (1973) 1 SCC 115, distinguished

Pariya Devi v. Godavari Devi, Second Appeal No. 50 of 2001, order dated 16-5-2007 (Pat), reversed

[142] — S. 100 — Substantial question of law — Must be formulated by High Court before hearing of appeal — Procedure to be followed under S. 100 restated — *High Court, instead of formulating substantial questions of law, formulated some questions of law after conclusion of arguments and allowed appeal — Held, High Court's judgment vitiated for non-compliance with mandatory requirements of S. 100. Biswanath Ghosh* v. *Gobinda Ghosh*, (2014) 11 SCC 605: (2014) 4 SCC (Civ) 192: AIR 2014 SC 1582: (2014) 104 ALR 184: (2014) 5 LW 349: (2014) 137 AIC 176: (2014) 2 Cal LT 54.

Bench Strength **2**. Coram: *J.S. Khehar* and **M. Yusuf Eqbal**, JJ. [Date of decision: 14-3-2014]

Sasikumar v. Kunnath Chellappan Nair, (2005) 12 SCC 588; Gurdev Kaur v. Kaki, (2007) 1 SCC 546, followed

[143] — S. 100 — Substantial question of law — What is — Whether plaintiff always ready and willing to perform his part of contract and entitled to a decree for specific performance of the contract, not a question of law, hence cannot be framed, nor can interference with concurrent findings of courts below on that question be called for — Hence decree of specific performance granted by trial court and first appellate court to transferee under prior contract for sale (CFS) (appellant plaintiff) against subsequent transferee with notice of the prior CFS, confirmed — *Specific Relief Act, 1963, S. 16(c). Jogendra Ram* v. *Phullan Mian*, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370: (2012) 91 ALR 905: (2012) 112 AIC 111.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 1-12-2011]

Phullan Mian v. Jogendra Ram, AIR 2006 Pat 183, reversed

[144] — Ss. 100 and 102 — Frivolous litigation — Expenses to be paid personally by official(s) concerned — Bar on second appeal from money recovery suit involving less than Rs 25,000 — *Second appeal for amount of Rs 8724 payable to respondent employee as reimbursement of medical claim by employer Corporation and filing of SLP thereafter before Supreme Court — Deprecating such practice which wastes valuable time and energy of parties concerned as well as Court, held, petitioner Corporation, treating litigation as luxury must have already spent more than total amount involved — Directed, that expenses of litigation were to be paid by Managing Director of petitioner Corporation personally who signed the affidavit in support of special leave petition and not to be paid by petitioner Corporation — Copy of order to be sent to Chief Secretary of Haryana as well as Managing Director while keeping question of law open — Constitution of India, Art. 136* (Paras 1, 2 and 6). *Haryana Dairy Development Coop. Federation Ltd.* v. *Jagdish Lal*, (2014) 3 SCC 156: (2014) 1 SCC (L&S) 487: (2014) 2 SCC (Cri) 134: (2014) 2 SCC (Civ) 265: (2014) 118 Cut LT 295.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Jasti Chelameswar*, JJ. [Date of decision: 13-1-2014]

Kadra Pahadiya v. State of Bihar, (1997) 4 SCC 287: 1997 SCC (Cri) 553, followed

145th Report of the Law Commission of India, referred to

— S. 100, Or. 8 R. 2 and Or. 18 R. 2 — First appeal — Proper mode of disposal *See* CONTRACT AND SPECIFIC RELIEF — 'Termination/Discharge of Contract' — Termination/Repudiation for Breach of Contract, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

[145] — S. 100, Or. 41 R. 19 and Or. 9 R. 4 — Second appeal — Restoration of — On facts, held, application by appellant for restoration of regular second appeal ought to have been allowed by High Court — *Impugned order set aside and regular second appeal restored to its original number to be decided as expeditiously as possible, preferably within six months. Sushila*

Chhibber v. *Shashi Kumar Mehta*, (2014) 1 SCC 679: (2014) 1 SCC (Civ) 661.

Bench Strength 2. Coram: *S.S. Nijjar* and *H.L. Gokhale*, JJ. [Date of decision: 19-9-2012]

Sushila Kumari Chhibber v. Shashi Kumar Mehta, CMs Nos. 14139-40 of 2007 in Regular Second Appeal No. 119 of 1996, order dated 29-9-2008 (Del), reversed

— S. 102 *See* S. 100

[146] — S. 114 — Review jurisdiction of High Court — Scope — Error apparent on face of record — Meaning — Rehearing on merits, held, is impermissible — *Application filed by appellant for his impleadment as a proper party in suit filed by respondent against Municipal Corporation — Application allowed by trial court — Revision preferred by respondent against trial court's order dismissed by High Court — High Court in dismissing revision following reasons given by it in another revision case while being fully conscious that that case arose from a different suit — In review petition filed by respondent, High Court on fresh consideration on merits of question regarding impleadment of appellant in the suit recalled its earlier order and directed trial court to consider application for impleadment afresh — Held, High Court exceeded its review jurisdiction*

The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. Surely, review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits. (Para 6)

In its earlier order dismissing the revision petition filed by Respondent 1, the High Court, did not repeat the reasons which it had given in its decision in another case [*Naresh Ratiwal case*, Civil Revision Petition No. 2870 of 2010, order dated 25-10-2010 (AP)] arising from certain civil revision petitions, while being fully conscious of the fact that those civil revisions arose from a different suit, followed its order in that case. The High Court was thus fully conscious of the factual and legal position while it was considering the civil revision petition filed by the present Respondent 1. In the review petition against the order rejecting the revision, the High Court had a fresh look at the question whether the appellant could be impleaded in the suit filed by Respondent 1 and, in the light of the view which it took, it recalled its earlier order. The course followed by the High Court is clearly flawed. The High Court exceeded its review jurisdiction by reconsidering the merits of the order. (Paras 7 and 6). *N. Anantha Reddy* v. *Anshu Kathuria*, (2013) 15 SCC 534: (2014) 5 SCC (Civ) 358: (2014) 117 Cut LT 954: (2014) 105 ALR 153: (2014) 1 LW 116.

Bench Strength 2. Coram: **R.M. Lodha** and *Shiva Kirti Singh*, JJ. [Date of decision: 2-12-2013]

Anshu Kathuria v. N. Anantha Reddy, Review CMP No. 5278 of 2011 in Civil Revision Petition No. 3459 of 2010, decided on 13-12-2011 (AP), reversed

[147] — S. 114 r/w S. 53, Land Acquisition Act, 1894 — Review petition — Non-condonation of delay — Impropriety — *Delay of about 30 days in filing review petition — Explanation put forth was that the lawyer used to come from Allahabad to Nainital, who after coming to know about judgment applied for certified copy on 4-8-2005 which was delivered on 9-8-2005 and thereafter review petition was filed — Held, High Court instead of dismissing review petition ought to have condoned delay, since delay was sufficiently explained by appellant — Limitation Act, 1963, S. 5 — Land Acquisition Act, 1894, S. 53* (Para 19). *Jai Krishan* v. *State of Uttarakhand*, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73: AIR 2014 SC 3578: (2014) 5 CTC 98: (2014) 106 ALR 718: (2014) 142 AIC 245.

Bench Strength 2. Coram: **S.J. Mukhopadhaya** and *Dipak Misra*, JJ. [Date of decision: 1-7-2014]

— Ss. 114 and 151 r/w Or. 47 R. 1 *See* PROPERTY LAW — 'Ownership and Title', (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

[148] — S. 114 and Or. 3 Rr. 1 & 4 — Consent given by Counsel without instruction before High Court resulting in two contradictory orders — Relief thereagainst — Scope of review — *Held, under such situations petitioners should avail remedy by way review by filing appropriate application* (Paras 3 and 4). *Union of India* v. *Mohan Rocky Springwater Breweries Ltd.*, (2011) 15 SCC 229: (2014) 1 SCC (L&S) 537: (2014) 4 SCC (Cri) 578: (2014) 2 SCC (Civ) 361: (2011) 273 ELT 164.

Bench Strength 2. Coram: *Dr M.K. Sharma* and *Anil R. Dave*, JJ. [Date of decision: 29-7-2011]

— S. 114 and Or. 47 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[149] — S. 114 and Or. 47 — Review — Nature and object of — Reason for provision of hearing by same Judge as far as possible

A writ petition was filed by the appellant against a State Government order appointing an Assistant Commissioner as Administrator of a temple. A Single Judge of the Karnataka High Court allowed the writ petition in part quashing the Government Order but reserving liberty to the State to pass

appropriate orders after affording opportunity to the writ petitioners. The writ petitioner filed an appeal at the Dharwad Circuit Bench challenging that part of the order reserving liberty to respondents to pass fresh orders. The writ appeal was dismissed by a Division Bench of the High Court. The appellant filed a review petition at the Dharwad Circuit Bench.

The review petition was placed before a Division Bench consisting of two judges other than those constituted the original Bench which had disposed of the writ appeal. This was in terms of the Notification dated 29-12-2008 issued by the High Court which notified that "the review petitions relating to judgments, decree, order or sentence pronounced, made or passed by the Division Bench or Single Bench in respect of the Circuit Bench, Dharwad, will be posted as per the roster existing in the Circuit Bench, Dharwad". The third respondent objected that the review petition should be heard and decided by the Original Division Bench. He also contended that the Notification dated 29-12-2008 of the High Court was contrary to Rule 5 of the Karnataka High Court Rules, 1959. The Division Bench rejected the objections taking the view that Notification dated 29-12-2008 was issued to obviate hardship to the litigants and allowed the review petition by its judgment dated 17-12-2009.

The appellant thereafter filed a memo for listing the writ appeal (restored by order dated 17-12-2009) for fresh hearing. The memo came up for orders before another Division Bench consisting of two different judges. After hearing the parties on the said memo, the said Division Bench passed the impugned order dated 23-4-2010 holding that the judgment dated 17-12-2009 in the review petition allowing the petition in exercise of the review jurisdiction was a nullity and was without jurisdiction, having regard to the fact that the Bench which rendered the judgment in the writ appeal were still Judges in the High Court and were available for hearing; and that therefore a different Division Bench had no jurisdiction to take up a review petition, grant a review and reverse the order made in the writ appeal. Consequently the memo filed by the appellant for listing of the appeal restored for hearing was dismissed. The Division Bench relied upon Order 47 Rules 1 and 5 CPC and Rule 5 of the Karnataka High Court Rules, 1959, which the High Court in exercise of the powers conferred under Article 225 of the Constitution, Section 122 of the Code and other relevant provisions, with the previous approval of the Government of Karnataka had promulgated. The effect of the order was to declare that the review judgment dated 17-12-2009 was non est and a nullity and consequently the earlier judgment passed in the writ appeal continued to be in effect. The said order was challenged in this appeal by special leave.

The question for consideration was whether a Division Bench of the High Court, while considering a memo for listing an appeal restored for fresh hearing, on grant of application for review by a coordinate Bench could refuse to act upon the order of review on the ground that the said order made by a Bench different from the Bench which passed the original order, granting review is a nullity and that the original order stands.

Allowing the appeal,

Held :

An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is that the Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case. There is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore in the interests of justice, consistency in judicial pronouncements and maintaining good judicial traditions, an effort should always be made for review application to be heard by the same Judges, if they are in the same court. (Paras 18 and 20)

When the provision for review by the same Judge/s was made, it was made on the assumption that the Judges will be available at the same place. The Rules did not contemplate the Court having Benches outside the main seat or Circuit Benches and Judges moving from Bench to Bench or Judges and coming back after three months or six months. A Judge who sits and hears a matter in a Circuit Bench away from the main seat, may not be avail-

able in that particular Circuit Bench for a considerable time which may vary from three to six months or even more. Further, when two Judges heard the matter at a Circuit Bench, the chances of both Judges sitting again at that place at the same time, may not arise. Subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with. Any attempt to too readily provide for review applications to be heard by any available Judge or Judges should be discouraged. (Paras 20 and 21)

With the technological innovations available now, the review petitions can be heard by using the medium of video conferencing. Or an appropriate rule can be made, if such a rule is not already available, for consideration of the application or written submissions alone; e.g. Order 40 Rule 3 of the Supreme Court Rules which will not in any way violate Section 114 of the Code providing for review. The solution may not be to send the review petition to the place where the Judges concerned are holding their sitting in view of the fact that it would involve travel, engaging of new counsel, additional cost, etc. and defeat the very purpose of having Circuit Benches. Every effort should be made to achieve the object of review by ensuring that the matter is considered by the Judge or the Bench which rendered the judgment. (Para 22)

When the review petition was placed for hearing before the roster Bench, it was possible that for six more months there was no likelihood of the Judges constituting original Bench being together at Dharwad. The Bench before which the review application was placed held the writ appeal roster and listing of the case before that Bench and hearing by that Bench was valid as per Rules. The said Bench on 17-12-2009 considered and rejected the contention that the same Bench which passed the order should hear the review application, in view of the Notification dated 29-12-2008 and that Bench also held that the Chief Justice had the power and authority to issue the Notification dated 29-12-2008. The order dated 17-12-2009 was therefore neither a nullity nor one lacking inherent jurisdiction, nor obtained by fraud. Even assuming it to be erroneous, it was final as it was not challenged. (Para 24)

Once the application for review was granted on 17-12-2009, the order reviewed stands recalled. Consequently the writ appeal stood revived and restored. Therefore when the appellant filed a memo for listing the writ appeal for hearing, he was not really seeking a judicial order for restoration but only a direction for fixing a date for hearing the writ appeal. When an application or memo is filed in a matter where review has been granted, the Bench dealing with such memo or application is bound to proceed on the basis of the said order granting review, in view of the principles of finality and res judicata. Even a wrong decision between parties which has attained finality is binding and cannot be reagitated or reopened at a later stage. The review order dated 17-12-2009 considered the statutory provisions relating to review and consciously arrived at a decision that the provisions thereof did not prevent it from hearing the application for review. Neither party was aggrieved by it and the order dated 17-12-2009 was not under challenge. Therefore when the memo for posting was filed by one of the parties, the Court, being bound by its final decision rendered on 17-12-2009 ought to have listed the writ appeal for hearing and could not have examined the correctness or validity of the review order dated 17-12-2009. (Para 25)

Therefore, the impugned order dated 23-4-2010 is set aside and the writ appeal is directed to be listed for final hearing. (Para 26). *Malthesh Gudda Pooja* v. *State of Karnataka*, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473: (2012) 3 CTC 59.

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 11-10-2011]

Benjamin Cardozo: The Nature of Judicial Process, pp. 12, 13, referred to

Malthesh Gudda Pooja v. State of Karnataka, Writ Appeal No. 169 of 2007, order dated 23-4-2010 (Kant), reversed

— **S. 115** *See* Or. 21 R. 35

See also CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

See also RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

See also TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— 'U.P. Consolidation of Holdings Act, 1953 (5 of 1954)', S. 48, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

[150] — S. 115 — High Court's interference in revision with concurrent findings — Permissible, when findings are perverse and arbitrary — Conclusion of courts below based on inferences, not drawn from established facts and not legally

legitimate, held, liable to be set aside — *Landlord's suit for eviction of tenant on ground of sub-letting of premises without his consent — Issue of sub-letting can be proved on basis of legitimate inferences drawn by court — Drawing inferences from established facts can be considered to be a point of law — But when inferences drawn by trial court and appellate court do not flow from established facts and are not legitimate, High Court can interfere therewith in exercise of its revisional jurisdiction — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 13(1)(e). S.F. Engineer* v. *Metal Box India Ltd.*, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662: AIR 2014 SC 2189: (2014) 6 Mah LJ 478: (2014) 104 ALR 473: (2014) 137 AIC 21.

Bench Strength 2. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 28-3-2014]

Shama Prashant Raje v. Ganpatrao, (2000) 7 SCC 522; Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217: (2010) 1 SCC (Civ) 69; Vinaykishore Punamchand Mundhada v. Bhumi Kalpataru, (2010) 9 SCC 129: (2010) 3 SCC (Civ) 625; Bharat Sales Ltd. v. LIC, (1998) 3 SCC 1; Joginder Singh Sodhi v. Amar Kaur, (2005) 1 SCC 31, followed

Metal Box India Ltd. v. S.F. Engineer, Civil Revision Application No. 355 of 2010, decided on 12-8-2010 (Bom), affirmed

— Ss. 115 and Ss. 96 & 100 — Relative scope

See PRACTICE AND PROCEDURE — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

[151] — S. 122 and Or. 47 R. 5 — Review by High Court Original Bench — Rules framed under S. 122 prevail over rules under Sch. I in case of inconsistency — However, R. 5 of Karnataka High Court Rules framed under S. 122 not inconsistent with R. 5 of Or. 47 CPC — *Both the provisions mandate that review petitions should normally be heard and decided by original Bench of High Court which pronounced judgment sought to be reviewed, if judges constituting the Bench continue to be Judges of the court and if they are not precluded by death, retirement or absence from court for six months from the date of application — Words "absence" and "continue attached to the court" in Or. 47 R. 5 — Meaning — Reason for such rule stated — Even if there are Circuit Benches or Benches outside the main seat requiring Judges to move from Bench to Bench and come back after 3-6 months or more, effort should always be made for review petition to be heard by the same Judges or if one of them is not available, at least by a Bench consisting of the other Judge, in the interest of justice, consistency in judicial pronouncements and maintaining good judicial traditions — Review petitions can also be heard by the Judges through video conferencing or rules can be made, if there are no such rules, for consideration of petitions on the basis of written submissions alone — Constitution of India, Art. 226*

A writ petition was filed by the appellant against a State Government order appointing an Assistant Commissioner as Administrator of a temple. A Single Judge of the Karnataka High Court allowed the writ petition in part quashing the Government Order but reserving liberty to the State to pass appropriate orders after affording opportunity to the writ petitioners. The writ petitioner filed an appeal at the Dharwad Circuit Bench challenging that part of the order reserving liberty to respondents to pass fresh orders. The writ appeal was dismissed by a Division Bench of the High Court. The appellant filed a review petition at the Dharwad Circuit Bench.

The review petition was placed before a Division Bench consisting of two judges other than those constituted the original Bench which had disposed of the writ appeal. This was in terms of the Notification dated 29-12-2008 issued by the High Court which notified that "the review petitions relating to judgments, decree, order or sentence pronounced, made or passed by the Division Bench or Single Bench in respect of the Circuit Bench, Dharwad, will be posted as per the roster existing in the Circuit Bench, Dharwad". The third respondent objected that the review petition should be heard and decided by the Original Division Bench. He also contended that the Notification dated 29-12-2008 of the High Court was contrary to Rule 5 of the Karnataka High Court Rules, 1959. The Division Bench rejected the objections taking the view that Notification dated 29-12-2008 was issued to obviate hardship to the litigants and allowed the review petition by its judgment dated 17-12-2009.

The appellant thereafter filed a memo for listing the writ appeal (restored by order dated 17-12-2009) for fresh hearing. The memo came up for orders before another Division Bench consisting of two different judges. After hearing the parties on the said memo, the said Division Bench passed the impugned order dated 23-4-2010 holding that the judgment dated 17-12-2009 in the review petition allowing the petition in exercise of the review jurisdiction was a nullity and was without jurisdiction, having regard to the fact that the Bench which rendered the judgment in the writ appeal were still Judges in the High Court and were available for hearing; and that therefore a different Division Bench had no jurisdiction to take up a review petition, grant a review and reverse the order made in the writ appeal. Consequently the memo

filed by the appellant for listing of the appeal restored for hearing was dismissed. The Division Bench relied upon Order 47 Rules 1 and 5 CPC and Rule 5 of the Karnataka High Court Rules, 1959, which the High Court in exercise of the powers conferred under Article 225 of the Constitution, Section 122 of the Code and other relevant provisions, with the previous approval of the Government of Karnataka had promulgated. The effect of the order was to declare that the review judgment dated 17-12-2009 was non est and a nullity and consequently the earlier judgment passed in the writ appeal continued to be in effect. The said order was challenged in this appeal by special leave.

The question for consideration was whether a Division Bench of the High Court, while considering a memo for listing an appeal restored for fresh hearing, on grant of application for review by a coordinate Bench could refuse to act upon the order of review on the ground that the said order made by a Bench different from the Bench which passed the original order, granting review is a nullity and that the original order stands.

Allowing the appeal,

Held :

The Rules made under Section 122 cannot be inconsistent with the body of the Code (that is, sections in the Code), but can be inconsistent with any of the rules in the First Schedule to the Code. As the Rules under Section 122 can alter or add any rule in the First Schedule to the Code, the provisions of Chapter 3 Rule 5 of the High Court Rules will prevail over Order 47 Rule 5 of the Code. However, there is no inconsistency between the two provisions. (Paras 10 and 15)

Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. The word "absence" is not defined and the duration of absence is not indicated in the said Rule. The ordinary meaning of the word "absence" is "the state of being away from one's usual place". The words "absence or other cause for a period of six months" in Order 47 Rule 5 of the Code and the words "by reason of death, retirement or absence" in Chapter 3 Rule 5 of the High Court Rules, in essence refer to the same causes, due to which the review application cannot be heard by the same Bench which passed the original order. Chapter 3 Rule 5 of the High Court Rules does not specify the period of "absence" but it is clear from the context that it does not refer to casual absence. Therefore, it is appropriate to interpret the said words as "absence for a period of six months next after the application" by taking guidance from Order 47 Rule 5 of the Code. The words "continue attached to the court" in Order 47 Rule 5 CPC mean available to perform normal duties and has not been transferred or away on deputation. (Paras 18, 15 and 16)

An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is that the Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case. There is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore in the interests of justice, consistency in judicial pronouncements and maintaining good judicial traditions, an effort should always be made for review application to be heard by the same Judges, if they are in the same court. (Paras 18 and 20)

When the provision for review by the same Judge/s was made, it was made on the assumption that the Judges will be available at the same place. The Rules did not contemplate the Court having Benches outside the main seat or Circuit Benches and Judges moving from Bench to Bench or Judges and coming back after three months or six months. A Judge who sits and hears a matter in a Circuit Bench away from the main seat, may not be available in that particular Circuit Bench for a considerable time which may vary from three to six months or even more. Further, when two Judges heard the matter at a Circuit Bench, the chances of both Judges sitting again at that place at the same

time, may not arise. Subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with. Any attempt to too readily provide for review applications to be heard by any available Judge or Judges should be discouraged. (Paras 20 and 21)

With the technological innovations available now, the review petitions can be heard by using the medium of video conferencing. Or an appropriate rule can be made, if such a rule is not already available, for consideration of the application or written submissions alone; e.g. Order 40 Rule 3 of the Supreme Court Rules which will not in any way violate Section 114 of the Code providing for review. The solution may not be to send the review petition to the place where the Judges concerned are holding their sitting in view of the fact that it would involve travel, engaging of new counsel, additional cost, etc. and defeat the very purpose of having Circuit Benches. Every effort should be made to achieve the object of review by ensuring that the matter is considered by the Judge or the Bench which rendered the judgment. (Para 22)

When the review petition was placed for hearing before the roster Bench, it was possible that for six more months there was no likelihood of the Judges constituting original Bench being together at Dharwad. The Bench before which the review application was placed held the writ appeal roster and listing of the case before that Bench and hearing by that Bench was valid as per Rules. The said Bench on 17-12-2009 considered and rejected the contention that the same Bench which passed the order should hear the review application, in view of the Notification dated 29-12-2008 and that Bench also held that the Chief Justice had the power and authority to issue the Notification dated 29-12-2008. The order dated 17-12-2009 was therefore neither a nullity nor one lacking inherent jurisdiction, nor obtained by fraud. Even assuming it to be erroneous, it was final as it was not challenged. (Para 24)

Once the application for review was granted on 17-12-2009, the order reviewed stands recalled. Consequently the writ appeal stood revived and restored. Therefore when the appellant filed a memo for listing the writ appeal for hearing, he was not really seeking a judicial order for restoration but only a direction for fixing a date for hearing the writ appeal. When an application or memo is filed in a matter where review has been granted, the Bench dealing with such memo or application is bound to proceed on the basis of the said order granting review, in view of the principles of finality and res judicata. Even a wrong decision between parties which has attained finality is binding and cannot be reagitated or reopened at a later stage. The review order dated 17-12-2009 considered the statutory provisions relating to review and consciously arrived at a decision that the provisions thereof did not prevent it from hearing the application for review. Neither party was aggrieved by it and the order dated 17-12-2009 was not under challenge. Therefore when the memo for posting was filed by one of the parties, the Court, being bound by its final decision rendered on 17-12-2009 ought to have listed the writ appeal for hearing and could not have examined the correctness or validity of the review order dated 17-12-2009. (Para 25)

Therefore, the impugned order dated 23-4-2010 is set aside and the writ appeal is directed to be listed for final hearing. (Para 26). *Malthesh Gudda Pooja* v. *State of Karnataka*, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473: (2012) 3 CTC 59.

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 11-10-2011]

Benjamin Cardozo: The Nature of Judicial Process, pp. 12, 13, referred to

Malthesh Gudda Pooja v. State of Karnataka, Writ Appeal No. 169 of 2007, order dated 23-4-2010 (Kant), reversed

— **S. 144** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

[152] — Ss. 148, 47 and Or. 23 R. 3 — Applicability of — Court's power thereunder in relation to enlargement of time — Held, can be exercised only in respect of the period fixed or granted by the court, and not that fixed by parties — *Thus, where the stipulation in compromise decree was that the judgment-debtor was required to make payment of money within a specified period was a stipulation by agreement between the parties concerned and it was not a period fixed by the court, held, S. 148 CPC could not be invoked in relation to said period — Hence original compromise decree restored and eviction directed in terms thereof — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 13(1), (5) and 12(1)(a)* (Para 13.1).

Shivshankar Gurgar v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

Hukumchand v. Bansilal, AIR 1968 SC 86, followed

— S. 149 and Or. 7 Rr. 11(b) & (c) *See also* LIMITATION — 'Limitation Act, 1963', S. 5, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425

[153] — S. 149 and Or. 7 Rr. 11(b) & (c) — Discretionary power of court to allow party to make up deficiency of court fee within stipulated time and to retrospectively validate insufficiency of stamp duty, etc. — Manner of exercise of — *Ordinarily discretion to be exercised in favour of litigating parties unless there are manifest grounds of mala fides — Concealment of material fact while making application for extension of date for payment of court fee can be ground for dismissal of plaint — On facts held, rejection of appellant's application by Court of Sub-Judge for extension of time for remitting balance court fee which he was unable to pay due to financial constraints, held, erroneous and liable to be set aside — Court Fees Act, 1870, S. 12* (Para 7). *Manoharan* v. *Sivarajan*, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425: (2014) 1 LW 83: (2014) 5 Mah LJ 3: (2014) 3 MPLJ 495: (2013) 4 KLT 828: (2014) 102 ALR 228: (2014) 133 AIC 58.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 25-11-2013]

State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94: 2000 SCC (L&S) 845, followed

— S. 151 *See* Or. 18 R. 17

— S. 151 — Inapplicability *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18, 30, 31 and 3(b), (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197

[154] — S. 151 — Inherent powers under — Applicability — Principles reiterated — *Such powers can be used: (a) when CPC has no remedy, (b) in a pending suit, (c) at the behest of persons who are parties to suit in a manner consistent with justice and equity, (d) in case, a party is prejudiced, (e) in case of failure of justice, (f) in case of fraud on court (as distinguished from fraud on a party), and (d) for consolidation of suits, where there are common questions of fact and law (not being a case of misjoinder of parties) — But such powers cannot be used to re-open settled matters or to restrain the execution of a decree at the instance of one who was not a party to suit — Said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law*

Inherent powers under Section 151 CPC can be exercised by the Court to redress only such a grievance, for which no remedy is provided for under the Code of Civil Procedure. Section 151 CPC is a mere procedural provision which enables a party to have the proceedings of a *pending suit* conducted in a manner that is consistent with justice and equity. The said inherent powers cannot be used to re-open settled matters or to restrain the execution of a decree at the instance of one who was not a party to suit. Consolidation of suits is not provided for in CPC but can be done under Section 151 CPC where a common question of fact and law arise but not being a case of misjoinder of parties. Non-consolidation may lead to a multiplicity of suits and may prejudice a party, or result in the failure of justice. Inherent powers may be exercised ex debito justitiae in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law. (Paras 28.2, 13 and 14)

The inherent powers under Section 151 CPC can be exercised where a party has obtained a decree or order by playing a fraud upon the court, or where an order has been passed by a mistake of the court, the court may be justified in rectifying such mistake, either by recalling the said order, or by passing any other appropriate order. Moreover, in the event that a fraud has been played upon a party, the same may not be a case where inherent powers can be exercised. In such an eventuality, a party has the right to get the said judgment or order set aside, by filing an independent suit. (Paras 16 to 19, 28.3 and 28.4). *Ram Prakash Agarwal* v. *Gopi Krishan*, (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197: (2013) 3 CTC 356: (2013) 116 Cut LT 609: (2013) 98 ALR 269: (2013) 125 AIC 32: (2013) 3 LW 280.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

— Ss. 151 and 152 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 34 and 30(1) & (2) as amended w.e.f. 24-9-1984, (2013) 11 SCC 375: (2014) 1 SCC (Civ) 527

[155] — S. 151 and Or. 9 R. 13 — Exercise of inherent powers for setting aside of ex-parte decree — Scope of applicability, clarified — *Doctrines and Maxims — Actus curiae neminem gravabit*—an act of the court shall prejudice no person

In exceptional circumstances, the Court may exercise its inherent powers, apart from Order 9 CPC to set aside an ex parte decree. An ex parte

decree can be set aside for non appearance of the counsel of a party or where the absence of a defendant is caused on account of a mistake of the court or in the event that an ex parte order has been obtained by fraud upon the court or by collusion. Thus, where a court employs a procedure to do something that it never intended to do, and there is miscarriage of justice, or an abuse of the process of court, the injustice so done must be remedied, in accordance with the principle of *actus curiae neminem gravabit*—an act of the court shall prejudice no person. (Para 15). *Ram Prakash Agarwal* v. *Gopi Krishan*, (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197: (2013) 3 CTC 356: (2013) 116 Cut LT 609: (2013) 98 ALR 269: (2013) 125 AIC 32: (2013) 3 LW 280.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

[156] — S. 151, Or. 18 R. 17 and Or. 7 R. 14 — Recall of witness — Filing of application for re-examination of witness, when matter posted for judgment — Exercise of inherent powers — Impermissibility of — *Respondent-plaintiff filing suit for recovery of an amount — When matter posted for judgment, respondent-plaintiff filed application to submit some more documents and recall of PW 1 for proving those documents — Trial court rejected that application whereas High Court permitted it — Unsustainability of — Held, though application was filed for filing of original copies of bills but they were not placed on record even though they were in the exclusive possession of respondent-plaintiff — At such belated stage, when evidence had concluded and arguments were heard, submission of bills was improper and respondent-plaintiff cannot be permitted to fill up its lacunae in its case — No acceptable reasons or causes made out for accepting that application at the belated stage despite sufficient opportunity being given to respondent-plaintiff to prove its case — When such application filed at a very belated stage, even inherent powers under S. 151 cannot be used* (Paras 14 and 15). *Bagai Construction* v. *Gupta Building Material Store*, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382: AIR 2013 SC 1849: (2013) 116 Cut LT 489: (2013) 97 ALR 728: (2013) 124 AIC 70: (2013) 2 LW 610.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 22-2-2013]

Gupta Building Material Store v. Lalit Bagai, CM (M) No. 707 of 2010, order dated 23-8-2011 (Del), reversed

— **Or. 1 Rr. 3 & 4** *See* S. 96

[157] — Or. 1 R. 9 and Or. 41 R. 20 — Necessary party — Who is — Non-joinder of parties in appeal — When not fatal — Non-impleadment of all the parties to arbitration award in appeal — Effect — *Application challenging arbitration award filed by only one of respondents allowed and award set aside by Single Judge of High Court — Appeal against said order dismissed by Division Bench as not maintainable on ground that appellant had not impleaded all parties likely to be affected by said appeals — Sustainability — On facts, Single Judge set aside award at the instance of only the respondent and other parties did not challenge award — Hence, respondent was the only necessary party in appeals before Division Bench — Thus, it was not necessary for appellant to implead all other parties in appeals even though they may be affected by the award — Matters remanded to Division Bench of High Court to decide the same on merits — Arbitration and Conciliation Act, 1996, Ss. 37 and 34. Hindustan Vidyut Products Ltd.* v. *Delhi Power Co. Ltd.*, (2014) 13 SCC 662: (2014) 5 SCC (Civ) 761.

Bench Strength **2**. Coram: *A.K. Patnaik* and *M. Yusuf Eqbal*, JJ. [Date of decision: 22-7-2013]

Hindustan Vidyut Products Ltd. v. Delhi Power Co. Ltd., ILR (2011) 5 Del 36: (2011) 1 Arb LR 564, reversed

— **Or. 1 R. 10** *See* Or. 8 R. 1 proviso

— **Or. 2 R. 2** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

[158] — Or. 2 R. 2 — Bar of subsequent suit — Conditions for invocation of — *When cause of action and parties involved in both suits are the same and reliefs claimed in subsequent suit could have been claimed in previous suit itself but had been omitted, only then would subsequent suit be barred under R. 2 — Bar under R. 2 must be specifically pleaded by defendant in subsequent suit and trial court must frame a specific issue in that regard — Court must examine both the plaints by reading them as a whole to identify cause of action after giving opportunity to plaintiff to explain its case — On facts held, cause of action on which two suits were based were the same and parties were also the same and in absence of any explanation of plaintiff as to why reliefs claimed in subsequent suit had not been claimed in previous suit, subsequent suit barred under R. 2 . Coffee Board* v. *Ramesh Exports (P) Ltd.*, (2014) 6 SCC 424: (2014) 3 SCC (Civ) 586: AIR 2014 SC 2301: (2014) 6 Mah LJ 531: (2014) 3 CTC 728: (2014) 105 ALR 700: (2014) 140 AIC 219: (2014) 4 LW 729: (2014) 2 Cal LJ 241: (2014) 4 MPLJ 500.

Bench Strength **2**. Coram: *C.K. Prasad* and **P.C. Ghose**, JJ. [Date of decision: 9-5-2014]

Lachhmi v. Bhulli, ILR (1927) 8 Lah 384, held, approved

Ramesh Exports (P) Ltd. v. Coffee Board, Regular First Appeal No. 1033 of 2005, decided on 19-12-2011 (KAR), reversed

[159] — Or. 2 R. 2 — Bar of subsequent suit under — Applicability of bar — Principles reiterated — When cause of action is the same, suit must include whole claim and plaintiff cannot split up claim so as to omit one part and sue for the other — *In present case, two consecutive suits filed based on same cause of action — Facts on which subsequent suit filed existed on date of filing of first suit — No fresh cause of action arose in between two suits — Relief sought in second suit could have been sought in first suit — Held, cause of action in both suits being the same and plaintiff having omitted to seek certain relief in the first suit, he cannot file second suit seeking that same relief* (Paras 11 to 17). *SBI* v. *Gracure Pharmaceuticals Ltd.*, (2014) 3 SCC 595: (2014) 2 SCC (Civ) 308: AIR 2014 SC 731: (2014) 4 Mah LJ 20: (2014) 2 MPLJ 696: (2014) 118 Cut LT 59: (2014) 102 ALR 223: (2014) 133 AIC 6: (2014) 1 LW 1.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 22-11-2013]

Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd., (2007) 7 SCC 148; Naba Kumar Hazra v. Radhashyam Mahish, (1931) 34 LW 444: AIR 1931 PC 229; Sidramappa v. Rajashetty, (1970) 1 SCC 186; Gurbux Singh v. Bhooralal, AIR 1964 SC 1810; Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137, applied

Gracure Pharmaceuticals Ltd. v. SBI, RFA No. 497 of 2006, order dated 8-12-2008 (Del), reversed

— **Or. 3** *See also* ADVOCATES — 'Advocates Act, 1961', S. 32, (2011) 15 SCC 449: (2014) 2 SCC (Civ) 617

— **Or. 3 R. 1** *See* S. 114

— **Or. 3 Rr. 1 and 2** *See* PRACTICE AND PROCEDURE — 'Power-of-Attorney', (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— **Or. 3 R. 4** *See* S. 114

— **Or. 6 Rr. 1 & 2** *See also* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **Or. 6 Rr. 1 & 2, Or. 14 Rr. 1 to 3 and Or. 20 Rr. 4(2) & 5** *See* PRACTICE AND PROCEDURE — 'Pleadings/New Plea/Additional Plea/Alternative Plea', (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

— **Or. 6 R. 2** *See also* Or. 8 R. 3; Or. 18 R. 2

[160] — Or. 6 Rr. 2 and 4 and Or. 8 Rr. 3 to 5 — Pleadings — Importance of — Detailed particularised and specific pleadings — Necessity — *Held, a party has to plead his case and adduce sufficient evidence to substantiate his submissions — In case of incomplete pleadings, court is under no obligation to entertain same — On facts held, in absence of any specific pleading as to what document had not been supplied to plaintiff-respondent delinquent which was relied upon by enquiry officer, or which witness was not permitted to be cross-examined by him, finding of trial court that departmental enquiry initiated against plaintiff-respondent was in violation of natural justice, held, is erroneous, since same was based merely on allegations in plaint which the defendant-appellant corporation had failed to rebut — Moreover, burden of proving the issue was on plaintiff-respondent and not defendant Corporation — Hence, dismissal order, restored — Evidence Act, 1872, Ss. 101 to 103*

It is a settled proposition of law that a party has to plead the case and produce/adduce sufficient evidence to substantiate his submissions made in the plaint and in case the pleadings are not complete, the court is under no obligation to entertain the pleas. *Rajasthan SRTC* v. *Bajrang Lal*, (2014) 4 SCC 693: (2014) 2 SCC (L&S) 97: (2014) 2 SCC (Civ) 721: (2014) 5 Mah LJ 233: (2014) 3 MPLJ 506: (2014) 5 LW 144: (2014) 2 Cal LJ 124.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *Jasti Chelameswar*, JJ. [Date of decision: 14-3-2014]

Suwalal Chhogalal v. CIT, (1949) 17 ITR 268 (Nag), held, approved

U.P. SRTC v. Suresh Chand Sharma, (2010) 6 SCC 555: (2010) 2 SCC (L&S) 239; Municipal Committee, Bahadurgarh v. Krishnan Behari, (1996) 2 SCC 714: 1996 SCC (L&S) 539: (1996) 33 ATC 238, followed

Rajasthan SRTC v. Bajrang Dal, Civil Second Appeal No. 449 of 2003, decided on 8-11-2005 (Raj), reversed

— **Or. 6 R. 3** *See* Or. 8 R. 3

— **Or. 6 R. 4** *See* Or. 6 R. 2; Or. 8 R. 3

See also ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power — Burden of Proof/Proof of/Persons to be impleaded, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

See also RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

— **Or. 6 R. 7** *See* Or. 7 R. 8

— **Or. 6 R. 14** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 138, 140 and 142, (2014) 4 SCC 704: (2014) 2 SCC (Civ) 732

[161] — Or. 6 R. 17 — Amendment to pleadings/claims — Permissibility — Bar of limitation — Relevance — *Reiterated, court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application — A time-barred claim cannot be asserted after the prescribed period of limitation — Limitation Act, 1963, S. 3* (Paras 28 to 30). *Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

— Or. 7 and 1 *See* PRACTICE AND PROCEDURE — 'Power-of-Attorney', (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343

— Ors. 7 and 18, S. 33 and Or. 20 Rr. 4 to 6 — Material other than legally admitted and proved evidence, such as RBI Committee Reports, mere averments in pleadings or unproved correspondence of parties, held, cannot form the basis of decreeing claim(s) against attached property of notified person — In the absence any evidence establishing case set out in plaint, suit liable to be dismissed *See*, Ss. 9-A and 9-B, (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523

— Or. 7 R. 2 *See* Or. 12 R. 6

[162] — Or. 7 R. 3 & Or. 20 R. 12 and Ss. 100, 35 & 35-B — Suit for recovery of possession based on title — Defendant admitting title of plaintiff, but seeking to defend possession on basis of grant/permission/licence from plaintiff — Onus of proof — *Suit for possession of immovable property and compensation by respondent-plaintiff registered leaseholder — Recovery of possession from defendant licensee who admitted title of plaintiff, and who was using land in violation of terms of licence — Licence granted in 1988 but on misuser, licence terminated in 1990, but defendant not vacating the premises — Suit filed alleging that defendant was an unauthorised occupant and trespasser who unauthorisedly raised construction on suit property for doing business — Appellant-defendant pleaded that respondent-plaintiff had inducted her in partnership firm as a partner in place of her deceased husband and she was thus in possession of suit property as partner — Onus, held, was on defendant to prove these facts — Defendant's claim based on an unregistered deed of partnership comprising plaintiff and defendant — Trial court and first appellate court concurrently found that plaintiff had not entered into any partnership with defendant, that she unauthorisedly occupied suit property and made construction thereon for business and that she was not in possession of suit property as partner of the firm — High Court dismissed second appeal taking view that no question of law much less any substantial question of law arose for consideration — Held, concurrent findings of courts below are pure findings of fact and are amply supported by evidence produced by parties — Hence question whether suit could be defended by appellant-defendant on strength of unregistered partnership deed need not be considered — Specific Relief Act, 1963, S. 5 — Evidence Act, 1872, Ss. 103 and 102 — Easements Act, 1882, Ss. 60 to 64. Leela Shashikant Purandare* v. *Arvind Vishnu Govande*, (2014) 3 SCC 645: (2014) 2 SCC (Civ) 315.

Bench Strength **2**. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 19-11-2013]

Leela Shashikant Purandare v. Arvind Vishnu Govande, Second Appeal No. 112 of 2013, order dated 30-4-2013 (Bom), affirmed

— Or. 7 R. 7 *See* Or. 7 R. 8

See also RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— Or. 7 R. 7 and Or. 2 R. 2 *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38, 5 and 6, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669

— Or. 7 R. 7 and Or. 41 R. 24 — Relief not claimed in prayer clause, but clearly discernible from materials on record *See* CONSTITUTION OF INDIA — 'Article 136' — Exercise of power under by Supreme Court — Relief — Approach: Considerations involved therein, Arts. 136 and 142, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— Or. 7 Rr. 7 & 14 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18, 23 and 24, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

[163] — Or. 7 Rr. 8 & 7, Or. 6 R. 7 and S. 100 — Relief claimed in the alternative on inconsistent grounds in plaint — Permissibility of — Principles reiterated — Manner of adjudication of such alternative pleas — Suit for possession based on principal plea that defendant being licensee whose licence having been terminated, defendants liable to vacate premises — Alternative plea that even under Rent Control Act defendants were liable to be evicted — Defendants' defence that they were in occupation of premises as tenants — Held, plea relating to eviction of defendants as tenants under Rent Control Act could be permitted to be alternatively urged along with principal plea relating to licence — *Held, alternative plea of appellant-plaintiff is not different from defence stand of defendants — On basis of such plea High Court was required to determine whether plaintiff had made out a case on grounds permissible under Rent Control Act — Alternative plea would require adjudication only if principal plea is rejected but it would become redundant if principal plea is accepted by court — Furthermore, in written statement defendants admitted that premises belonged to plaintiff and they were in occupation thereof as tenants — Alternative plea had not taken defendants by surprise as at trial parties got full opportunity to prove their respective cases on question whether defendants were licensees or tenants and trial court by a proper trial recorded findings in favour of defendants, which were however*

reversed by first appellate court — First appellate court granted relief to plaintiff by declining suit only on basis of principal plea, hence question whether alternative plea was contradictory lost its significance — Further by not allowing plaintiff to take alternative plea, plaintiff should not be, in interest of justice, driven to file a separate suit on same ground — In the circumstances, held, High Court erred in interfering with judgment and decree of first appellate court merely on ground that plaintiff could not be allowed to urge contradictory alternative plea — Decree of first appellate court, restored — Specific Relief Act, 1963, S. 5 — Easements Act, 1882, S. 63. Praful Manohar Rele v. *Krishnabai Narayan Ghosalkar*, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103: (2014) 1 CTC 402: (2014) 102 ALR 660: (2014) 134 AIC 65.

Bench Strength **2**. Coram: **T.S. Thakur** and *Vikramajit Sen*, JJ. [Date of decision: 3-1-2014]

J.J. Lal (P) Ltd. v. M.R. Murali, (2002) 3 SCC 98, applied

Krishnabai Narayan Ghosalkar v. Manohar Narayan Rele, Second Appeal No. 90 of 1992, decided on 16-10-2009 (Bom), reversed

[164] — Or. 7 R. 10 — Return of plaint — Reckoning of date of institution of suit in case of — Such date, held, is date on which suit based on returned plaint being presented before competent court commences and not date of suit wherein plaint was returned — *After return of plaint, presentation thereof before court of competent jurisdiction amounts to institution of a fresh suit, requiring commencement of trial afresh even if same had concluded before court which lacked jurisdiction — Latter suit cannot be considered a continuation of the earlier suit — Initial suit, filed before court having no territorial jurisdiction, decreed — But High Court in appeal directed return of plaint to respondent-plaintiff for presentation before court of competent jurisdiction — Plaint accordingly presented before competent court which passed decree in favour of respondent-plaintiff for payment of a certain amount with interest thereon by appellant-defendant from "date of filing of the suit till realisation" — Held, plaintiff entitled to interest from date of institution of second suit based on presentation of plaint before competent court and not from back date of filing suit before court which lacked jurisdiction, as institution of subsequent suit after return of plaint cannot be treated as continuation of previous suit — Plaintiff committed mistake in initially filing suit before a court which had no jurisdiction and that court also erred in receiving, registering and decreeing suit — But plaintiff cannot be permitted to take advantage of his own mistake and mistake of court — However, plaintiff entitled to benefit of S. 14 of Limitation Act and adjustment of court fee paid in previous suit — Limitation Act, 1963, S. 14 — Doctrines and Maxims — Actus curiae neminem gravabit — Doctrines and Maxims — Allegans suam turpitudinem non est audiendus. ONGC Ltd.* v. *Modern Construction & Co.*, (2014) 1 SCC 648: (2014) 1 SCC (Civ) 617: AIR 2014 SC 83: (2013) 6 CTC 77: (2013) 4 KLT 193: (2014) 104 ALR 36: (2014) 1 LW 177.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 7-10-2013]

Modern Construction & Co. v. ONGC, Special Civil Application No. 5036 of 2010, decided on 10-12-2010 (Guj), reversed

— Or. 7 R. 10, Or. 39 R. 1, 2 & 2-A *See* S. 100, (2013) 14 SCC 689: (2014) 3 SCC (Civ) 512

— Or. 7 Rr. 11(b) & 11(c) *See* S. 149

— Or. 7 R. 14 *See* S. 151

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18, 11, 23 and 54, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

[165] — Or. 7 R. 14 — Additional documents — Leave to file — *Single Judge of High Court on its Original Side (trial Judge) dismissed appellant's application — Order upheld by Division Bench of High Court as matters were at the stage of cross-examination — Order of Division Bench, set aside — Cross-examination had not yet commenced — Held, no reason for debarring the appellant from filing additional documents — Application under Or. 7 R. 14 CPC allowed. Kapil Kumar Sharma* v. *Lalit Kumar Sharma*, (2013) 14 SCC 612: (2014) 5 SCC (Civ) 680.

Bench Strength **2**. Coram: *Altamas Kabir* and *B. Sudershan Reddy*, JJ. [Date of decision: 9-4-2009]

[166] — Or. 8 — Decree in favour of defendant — When permissible — Held, decree in favour of defendant is permissible if defendant either pleads set-off or makes a counterclaim in terms of Or. 8 (Paras 29 and 30). *SBI* v. *National Housing Bank*, (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523: AIR 2013 SC 3478: (2013) 180 Comp Cas 15.

Bench Strength **3**. Coram: *R.M. Lodha*, **Jasti Chelameswar** and *Madan B. Lokur*, JJ. [Date of decision: 31-7-2013]

[167] — Or. 8 R. 1 proviso, Ss. 35, 35-B and Or. 1 R. 10 — Written statement — When may court grant permission to file written statement beyond period prescribed in Or. 8 R. 1 — Imposition of heavy costs therefor — *Application for extension of time for filing written statement by appellant-defendant till IA filed under Or. 1 R. 10 to implead Managing Director of plaintiff*

Company as plaintiff, who was privy to entire cause of action of suit for recovery of money based on alleged oral agreement/understanding between appellant and said MD — Said application for extension of time rejected by trial court and High Court on grounds that: (i) Company being legal entity entitled to file suit in its own name through authorised representative, non-impleadment of MD will have consequences only for plaintiff and not for appellant, (ii) character of plaint, pleadings and reliefs claimed therein would remain same, and (iii) since appellant herein has filed application to file written statement beyond the statutory period of 30 days plus 60 days — Following and reiterating Kailash, *(2005) 4 SCC 480, held, High Court ought to have permitted appellant to file written statement, beyond period prescribed in Or. 8 R. 1, which is permitted under exceptional circumstances — Hence, appellant permitted to file written statement within 2 weeks on payment of Rs 50,000 (Rupees fifty thousand) as costs* (Paras 7 and 8). *Sandeep Thapar* v. *SME Technologies (P) Ltd.*, (2014) 2 SCC 302: (2014) 2 SCC (Civ) 80: AIR 2014 SC 897: (2014) 3 Mah LJ 242: (2014) 2 MPLJ 315: (2014) 103 ALR 209: (2014) 135 AIC 153: (2014) 1 Cal LJ 89: (2014) 1 CTC 411.

Bench Strength **2**. Coram: *S.S. Nijjar* and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 2-1-2014]

Kailash v. Nanhku, (2005) 4 SCC 480, applied

Sandeep Thapar v. SME Technologies (P) Ltd., ILR (2011) 1 Del 700, reversed

— **Or. 8 R. 2** *See* Or. 18 R. 2

— **Or. 8 R. 3** *See also* Or. 6 R. 2

[168] — Or. 8 Rr. 3 to 5, Or. 12 R. 6 and Or. 6 Rr. 2 to 4 — Admission by failure to deny/traverse — When obtains — Specific pleadings in plaint, held, is a prerequisite — *Evidence Act, 1872, S. 17. Rajasthan SRTC* v. *Bajrang Lal*, (2014) 4 SCC 693: (2014) 2 SCC (L&S) 97: (2014) 2 SCC (Civ) 721: (2014) 5 Mah LJ 233: (2014) 3 MPLJ 506: (2014) 5 LW 144: (2014) 2 Cal LJ 124.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *Jasti Chelameswar*, JJ. [Date of decision: 14-3-2014]

— **Or. 8 R. 4** *See* Or. 6 R. 2; Or. 8 R. 3

— **Or. 8 R. 5** *See* Or. 6 R. 2; Or. 8 R. 3

— **Or. 8 R. 5(1) proviso and Or. 12 R. 6** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18 and 23, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

— **Or. 8 Rr. 6-A and 6-B** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 43, 2(9), 8, 11 and 21, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

[169] — Or. 8 R. 9 — Subsequent pleadings — Rejoinder — Filing of rejoinder to written statement — Non-consideration of facts stated in rejoinder — Validity of — *Dispute case by appellant-plaintiff filed under provisions of W.B. Cooperative Societies Act, 1983 — Respondent-defendant in written replies adopted stand contrary to documents relied upon by rival parties — A number of documents not mentioned in dispute case, relied upon by respondent — Held, pleadings between the parties could be considered as complete only after appellant was permitted to file a rejoinder — Exclusion from consideration, the factual position asserted by appellant-plaintiff in rejoinder, by Cooperative Tribunal and High Court hence, was not justified — W.B. Cooperative Societies Act, 1983 (45 of 1983), Ss. 95 and 96. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

— **Or. 9 R. 4** *See* S. 100

— **Or. 9 R. 13** *See* S. 151

— **Or. 9 R. 13 — Maintainability of application under in Land Acquisition proceedings in Reference Court** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18, 30, 31 and 3(b), (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197

— **Or. 9 R. 13 and S. 100** *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — General principles for grant of special leave, Art. 136, (2014) 2 SCC 140: (2014) 1 SCC (Civ) 664

— **Or. 11 R. 21 — Non-production of documents — Drawing of adverse inference — When warranted** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 27 and 25(c), (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

— **Or. 12 R. 1** *See* EVIDENCE ACT, 1872, Ss. 17 to 31 and 5 to 16, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

— **Or. 12 R. 6** *See also* Or. 8 R. 3

[170] — Or. 12 R. 6 — Admission should be categorical — It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it — *Evidence Act, 1872, Ss. 17 and 58. Himani Alloys Ltd.* v. *Tata Steel Ltd.*, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376: (2011) 87 ALR 875: (2011) 104 AIC 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 5-7-2011]

[171] — Or. 12 R. 6 — Judgment on admission — Nature and scope of — Held, being an enabling provision, it is neither mandatory nor peremptory but discretionary — *The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits — Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should*

not be exercised to deny the valuable right of a defendant to contest the claim — In short the discretion should be used only when there is a clear "admission" which can be acted upon — Evidence Act, 1872, Ss. 17 and 58 (Para 11). *Himani Alloys Ltd.* v. *Tata Steel Ltd.*, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376: (2011) 87 ALR 875: (2011) 104 AIC 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 5-7-2011]

[172] — Or. 12 R. 6 — Judgment on admission — Minutes in meetings — Whether an admission — *Minutes merely noting certain tentative figures and stating that final figure are subject to verification and discussions — Admission should be categorical — Held, on facts, the minutes do not refer to any admission to pay any amount — Evidence Act, 1872, Ss. 17 and 58. Himani Alloys Ltd.* v. *Tata Steel Ltd.*, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376: (2011) 87 ALR 875: (2011) 104 AIC 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 5-7-2011]

[173] — Or. 12 R. 6 — Judgment on admission — Suit for recovery of a sum of Rs 2,02,72,505/40 — Application for decree upon alleged admission for Rs 74,57,074/50 — Held, on facts, amount admitted to be due by the appellant, has nothing to do with appellant, actually figures in the minutes of a meeting between the respondent and another company, Himani Ferro Alloys Ltd. — *Respondent did not refer to or rely upon any other admission, nor sought judgment in regard to any other admission — Application ought to have been rejected by the High Court — High Court could not have embarked upon an enquiry as to whether there was some other admission nor given a judgment on the basis of such other admission, not pleaded by the respondent-plaintiff — If the respondent wanted to rely upon some other admission, it ought to have made a separate application, so that the appellant could have filed its objections to the same — Evidence Act, 1872, Ss. 17 and 58. Himani Alloys Ltd.* v. *Tata Steel Ltd.*, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376: (2011) 87 ALR 875: (2011) 104 AIC 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 5-7-2011]

[174] — Or. 12 R. 6 and Or. 7 R. 2 — Entry in accounts if admission — *If a buyer states that his account as on more than one year ago shows a balance of amount X to the credit of the supplier, it cannot be treated as an admission that the said amount X was due to the supplier — In a continuing account, it may be possible that between two dates there may be debits to the account, or "reversal of credits" or "settlement of the account" — Therefore there was no admission which could result in a judgment on admission — Evidence Act, 1872, Ss. 17 and 58. Himani Alloys Ltd.* v. *Tata Steel Ltd.*, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376: (2011) 87 ALR 875: (2011) 104 AIC 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 5-7-2011]

— Or. 18 Rr. 1 to 3 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18 and 23, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

[175] — Or. 18 R. 2, Or. 6 and Or. 8 R. 2 — Evidence that may be lead by defendant — Absence of pleadings in written statement — Evidence on pleadings not pleaded in written statement — Held, is inadmissible (Paras 39 and 44). *Ramachandra Narayan Nayak* v. *Karnataka Neeravari Nigam Ltd.*, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 27-8-2013]

[176] — Or. 18 R. 4 — Recording of evidence of party during cross-examination — Validity of the record — *Evidence recorded by Judge in open court in presence of party's counsel by reading it out loudly and also mentioning that there was no mistake on part of typist who recorded the deposition — Held, such evidence to be taken as correctly recorded unless the party proves otherwise by producing cogent evidence — On facts, deposition of plaintiff including admission portion recorded during his cross-examination, held, to be correctly recorded by trial court — Evidence Act, 1872, S. 137. Ramnivas Vyas* v. *H. Srinivasa Bhati*, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 18-9-2013]

— Or. 18 R. 17 *See also* S. 151

[177] — Or. 18 R. 17 — Recall of witness — Scope and object of — Held, it enables courts to clarify any doubts regarding evidence led by parties — It is not meant to fill up omissions in already adduced evidence — Power conferred upon court under Or. 18 R. 17 can be used either on application by parties or suo motu but it has to be used sparingly in an appropriate case — *Witness cannot be recalled and re-examined merely on the ground that no prejudice would be caused to the other side — Power thereunder if used in a routine manner would defeat the very purpose of amendments to Civil Procedure Code — Where application is bona fide and leading of additional*

evidence would clarify doubts of the court and earlier non-production was for valid reasons, then recalling of witness is permissible (Paras 9, 11 and 12). *Bagai Construction* v. *Gupta Building Material Store*, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382: AIR 2013 SC 1849: (2013) 116 Cut LT 489: (2013) 97 ALR 728: (2013) 124 AIC 70: (2013) 2 LW 610.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 22-2-2013]

[178] — Or. 18 R. 17 and S. 151 — Reopening of case by recalling witness — Filing of application at a belated stage of the suit — Exercise of power by courts, even under S. 151 — Impermissibility of — *Held, under S. 151 courts can exercise power to consider any such application wherever it is necessary to prevent miscarriage of justice — Where application filed for submission of documents, which were in possession of the party filing such application, even power under S. 151 cannot be exercised* (Para 14). *Bagai Construction* v. *Gupta Building Material Store*, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382: AIR 2013 SC 1849: (2013) 116 Cut LT 489: (2013) 97 ALR 728: (2013) 124 AIC 70: (2013) 2 LW 610.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 22-2-2013]

— **Or. 20** *See* S. 33

— **Or. 20 R. 5 and Or. 41 Rr. 29 to 31** *See* CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Issues in question not determined, Art. 226, (2011) 15 SCC 495: (2014) 2 SCC (Civ) 627

— **Or. 20 R. 12** *See* Or. 7 R. 3

[179] — Or. 21 R. 1 — Applicability — Execution of award of compensation as money decree — Award of compensation by Motor Accidents Claims Tribunal under Motor Vehicles Act — *Held, to be treated as money decree by virtue of R. 472 of A.P. Motor Vehicles Rules and can be sought to be executed by invoking Or. 21 R. 1 CPC — Motor Vehicles Act, 1988, S. 168 — Andhra Pradesh Motor Vehicles Rules, 1989, R. 472. V. Kala Bharathi* v. *Oriental Insurance Co. Ltd.*, (2014) 5 SCC 577: (2014) 3 SCC (Civ) 220: AIR 2014 SC 1563: (2014) 4 MPLJ 290: (2014) 3 CTC 35: (2014) 6 Mah LJ 1: (2014) 105 ALR 220: (2014) 138 AIC 48: (2014) 4 LW 603.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana, JJ.** [Date of decision: 1-4-2014]

Rajasthan SRTC v. Poonam Pahwa, (1997) 6 SCC 100, affirmed

[180] — Or. 21 R. 1 — Execution of award of compensation — Rule of appropriation — Adjustment of interest — Award passed by Motor Accidents Claims Tribunal comprising amount of compensation, interest thereon and costs — *Normal rule that amount deposited by judgment-debtor to be first adjusted towards interest and costs and then towards principal amount of compensation — Application of, held, would not amount to imposition of interest on interest, prohibited under S. 3(3)(c) of Interest Act, 1978 as interest is not included in amount of compensation — Interest Act, 1978, S. 3(3)(c)*

The language contained in the sub-rules of Order 21 Rule 1 CPC clearly indicates the appropriation of amount to be made in case the decree contains a specific clause, specifying the manner in which the money deposited is to be appropriated. In case of appropriation of amount unless the decree contains a specific provision, the amounts have to be appropriated as contemplated under Order 21 Rule 1: if the amount deposited by the judgment-debtor falls short of the decretal amount, the decree-holder is entitled to apply the rule of appropriation by appropriating the amount first towards interest, then towards costs and subsequently towards principal amount due under the decree. (Paras 15, 23 and 26). *V. Kala Bharathi* v. *Oriental Insurance Co. Ltd.*, (2014) 5 SCC 577: (2014) 3 SCC (Civ) 220: AIR 2014 SC 1563: (2014) 4 MPLJ 290: (2014) 3 CTC 35: (2014) 6 Mah LJ 1: (2014) 105 ALR 220: (2014) 138 AIC 48: (2014) 4 LW 603.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana, JJ.** [Date of decision: 1-4-2014]

Rajasthan SRTC v. Poonam Pahwa, (1997) 6 SCC 100; Meghraj v. Bayabai, (1969) 2 SCC 274; Mathunni Mathai v. Hindustan Organic Chemicals Ltd., (1995) 4 SCC 26; BHEL v. R.S. Avtar Singh & Co., (2013) 1 SCC 243: (2013) 1 SCC (Civ) 230; Industrial Credit and Development Syndicate Ltd. v. Smithaben H. Patel, (1999) 3 SCC 80, affirmed

Gurpreet Singh v. Union of India, (2006) 8 SCC 457, applied

Oriental Insurance Co. Ltd. v. V. Kala Bharathi, AIR 2006 AP 31: (2006) 38 AIC 361, reversed

Venkatadri Appa Row v. Parthasarathi Appa Row, (1920-21) 48 IA 150: (1921) 14 LW 25: AIR 1922 PC 233; Rai Bahadur Seth Nemichand v. Seth Ratha Kishen, (1921) 14 LW 391: AIR 1922 PC 26, followed

[181] — Or. 21 Rr. 1(1), (4) and (5) [before and after the 1976 Amendment] — Execution of money decree — Rule of appropriation — Decree comprising principal amount as well as interest up to date of realisation and costs — No direction made in decree, nor any agreement entered into between parties regarding mode of payment of decretal amount — Payment depos-

ited by judgment-debtor falling short of decretal amount — *Held, in such circumstances, normal rule that amount deposited must first be adjusted towards interest and costs and then towards principal amount, would apply — This rule continues to prevail and remains unaffected by 1976 Amendment to CPC. V. Kala Bharathi* v. *Oriental Insurance Co. Ltd.*, (2014) 5 SCC 577: (2014) 3 SCC (Civ) 220: AIR 2014 SC 1563: (2014) 4 MPLJ 290: (2014) 3 CTC 35: (2014) 6 Mah LJ 1: (2014) 105 ALR 220: (2014) 138 AIC 48: (2014) 4 LW 603.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 1-4-2014]

Rajasthan SRTC v. Poonam Pahwa, (1997) 6 SCC 100; Meghraj v. Bayabai, (1969) 2 SCC 274; Mathunni Mathai v. Hindustan Organic Chemicals Ltd., (1995) 4 SCC 26; BHEL v. R.S. Avtar Singh & Co., (2013) 1 SCC 243: (2013) 1 SCC (Civ) 230; Industrial Credit and Development Syndicate Ltd. v. Smithaben H. Patel, (1999) 3 SCC 80, affirmed

Gurpreet Singh v. Union of India, (2006) 8 SCC 457, applied

Oriental Insurance Co. Ltd. v. V. Kala Bharathi, AIR 2006 AP 31: (2006) 38 AIC 361, reversed

Venkatadri Appa Row v. Parthasarathi Appa Row, (1920-21) 48 IA 150: (1921) 14 LW 25: AIR 1922 PC 233; Rai Bahadur Seth Nemichand v. Seth Ratha Kishen, (1921) 14 LW 391: AIR 1922 PC 26, followed

— **Or. 21 Rr. 1(4) & 1(5)** *See* Or. 21 Rr. 1(1)

— **Or. 21 Rr. 3 & 10** *See* S. 47

— **Or. 21 R. 30** *See* Ss. 47; 51 provisos (a)(i) & (b)

See also CONSTITUTION OF INDIA, Art. 142, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370

[182] — Or. 21 Rr. 35, 97, 101 and 99 and S. 115 — Execution of decrees and orders — Objections by third parties in possession — Filing of, in executing court — Maintainability — *Respondent granted decree for specific performance of agreement and possession of land — Appellant filing objections during execution of decree claiming to be in possession of the land — Executing court and High Court dismissing appellant's objections — Inquiry into title/possession after finality of decree — Permissibility of — Held, a third person claiming to be in possession of property forming subject-matter of decree in his own right can resist delivery of possession even by filing an objection under Or. 21 R. 97 in executing court itself and objection shall have to be determined by executing court itself — Provisions of R. 100 of the old CPC, equivalent provision whereof is R. 99 in new CPC will not defeat right of such person to get his objection decided under R. 97 which is a stage prior to his dispossession — Appellant has already filed a suit for permanent injunction, but objections filed under Or. 21 R. 97 should have been heard and decided by executing court itself — A separate suit is not maintainable — Specific Relief Act, 1963, Ss. 10 and 38*

The respondent filed a suit for specific performance of an agreement of sale for possession over the land which was decreed. The decree was put to execution. When the warrant for delivery of possession was sought to be executed, the appellant offered resistance claiming to be in possession of the suit property and not bound by the decree. He preferred a petition under Order 21 Rules 35 and 97 CPC before the executing court. The objection was dismissed as not maintainable. The appellant preferred a revision to the High Court which too was dismissed. The appellant was before the Supreme Court thereagainst by special leave.

Allowing the appeal,

Held :

A third person claiming to be in possession of the property forming subject-matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 CPC in the executing court itself and if that is done, the objection shall have to be determined by the executing court itself. The provisions of Rule 100 of the old CPC, the equivalent provision whereof is Rule 99 in the new CPC will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession. The appellant has already filed a suit for permanent injunction wherein a temporary injunction has been obtained by the plaintiff protecting his possession. The objections of the appellant should have been heard and decided by the executing court itself. The objection filed by the objector (appellant) shall now be heard and decided in accordance with Order 21 Rule 97 read with Rule 101 CPC. A separate suit is not maintainable. (Paras 5 and 6). *Har Vilas* v. *Mahendra Nath*, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490.

Bench Strength **2**. Coram: *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision: 11-9-2003]

Shreenath v. Rajesh, (1998) 4 SCC 543; Anwarbi v. Pramod D.A. Joshi, (2000) 10 SCC 405, followed

Usha Jain v. Manmohan Bajaj, AIR 1980 MP 146: 1980 MPLJ 429 (FB), held, overruled

— **Or. 21 R. 37** *See* S. 51 provisos (a)(i)

[183] — Or. 21 R. 40 — Compliance with — Order of detention imposed after adequate opportunity given to person concerned to explain himself personally in court, till he had nothing further to state — Held, valid

Even Order 21 Rules 37 and 40 of CPC would be inapplicable for the execution of the Supreme Court's orders dated 31-8-2012 and 5-12-2012. Firstly, because the above provisions of CPC, relating to execution, have not been made applicable for enforcement of orders passed under the SEBI Act. Secondly, a perusal of Order 21 Rule 37(1) CPC reveals that where a court is satisfied that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the court, the procedural requirements of the aforesaid Rules is expressly excluded. Likewise, Order 21 Rule 37(2) CPC provides that the procedural requirements depicted therein, would be inapplicable when the judgment-debtor does not enter appearance before a court in obedience of a notice issued to him. The impression of the Supreme Court, that the petitioner would abscond, and the fact, that the petitioner did not enter appearance when summoned to do so, is apparent from the orders passed by the Supreme Court. Thus there is no room for any doubt that Order 21 Rule 37 was rendered inapplicable insofar as the petitioner is concerned. A perusal of Order 21 Rule 40 CPC reveals that the procedural requirements expressed in the same would come into play inter alia, after the person concerned "... is brought before the court after being arrested in execution of a decree for the payment of money...". Reference to above rule, on behalf of the petitioner, is therefore wholly misconceived as the requirements of Order 21 Rule 40 also stood fully complied with since on 4-3-2014, all the contemnors were present. Not only were the Senior Counsel appearing for the petitioner permitted to address arguments, an opportunity of hearing was afforded to each of the Directors present in Court, as also, Subrata Roy Sahara. In the facts and circumstances of the controversy it needs to be noticed that Subrata Roy Sahara was repeatedly heard on 4-3-2014, as and when he desired to express his view, till he had nothing further to state. The above deliberations should not be understood to mean that the aforesaid provisions of CPC, relied upon by the Senior Counsel, were applicable to this case. The above deliberations only demonstrated that the parameters laid down in the above provisions cannot be stated to have been disregarded when the impugned order dated 4-3-2014 was passed. (Paras 88 and 112). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), affirmed

— Or. 21 Rr. 64 to 69 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 37 r/w S. 35, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 37, 35 and 13(8), (2014) 5 SCC 610

— Or. 21 Rr. 69 & 83 *See* Or. 21 R. 89

[184] — Or. 21 Rr. 84, 85 and 89(1)(a) — Auction-sale of immovable property in partition suit — Payment of bid amount by demand drafts — Sale, held, not vitiated for not depositing bid amount in cash — When bid amount running in crores of rupees, payment of bid amount by demand drafts is proper compliance — *Appellant judgment-debtor filing application for setting aside said sale on ground that 25% of bid amount was not deposited on fall of the hammer as per Rr. 84 and 85 — Further contention that being one of the family members of decree holder, appellant should have been permitted to get the sale executed in his favour and he was ready and willing to deposit the entire amount — Tenability — On facts, respondent auction-purchaser deposited 25% of bid amount by way of 27 demand drafts on 8-10-2010 (date of auction) and remaining 75% of bid amount on 23-10-2010 — Hence, held, auction was not vitiated as auction-purchaser had complied with provisions of Or. 21 Rr. 84 and 85 — Further held, deposit of 5% of purchase money is condition precedent for entertaining application by judgment-debtor to set aside execution of sale — Appellant judgment-debtor having not deposited 5% of purchase money while filing application for setting aside execution of sale, held, said application and belated offer of appellant for payment of entire amount was rightly rejected by executing court and High Court*

The decree-holders and judgment-debtors were co-sharers of the suit property. The predecessor-in-interest of the decree-holders filed a suit for the partition of the suit property and after passing a final decree, the suit property was ordered to be sold in public auction and the sale proceeds were directed to be distributed among the shareholders. In auction-sale held on 8-10-2010 the auction was completed, and the auction-purchaser M/s J.S. Exim Ltd. (first respondent) was found to be the highest bidder for a bid amount of Rs 9.60 crores. The auction-purchaser deposited Rs 2.40 crores by way of 27 demand drafts of even date towards 25% of the bid amount. Later, the auction-purchaser

deposited the remaining 75% of the sale price/bid amount of the suit property on 23-10-2010 in State Bank of India. While the auction-purchaser moved an application for confirmation of sale, judgment-debtor 2, the appellant herein, sought for cancellation of the auction stating that the auction-purchaser had failed to deposit 25% of the bid amount on completion of the auction-sale proceedings. It was also contended that the auction was vitiated due to the violation of the mandatory provisions of Order 21 Rules 84 and 85 CPC.

The executing court elaborately considered the various contentions raised by the parties and rejected the objection raised by the appellant judgment-debtor and confirmed the auction. The appellant judgment-debtor, aggrieved by the said order, preferred an appeal before the High Court. Before the High Court, contention was raised that the auction-purchaser had not complied with the mandatory requirements of Order 21 Rules 84 and 85 CPC and that 25% of the bid amount was not deposited on the fall of the hammer and, consequently, the entire sale transaction was void and liable to be set aside. Further, it was also stated that since the appellant was one of the family members, he should have been permitted to get the sale executed in his favour, since he had a pre-emptive right and he was ready and willing to deposit the entire amount so as to avoid the sale. The High Court after considering the various contentions raised by the parties concurred with the views of the executing court that the auction-purchaser had complied with Order 21 Rules 84 and 85 CPC. The High Court, therefore, upheld the order of the trial court confirming the sale and directed the parties to execute documents of title in favour of the auction-purchaser. Aggrieved by the same, this appeal was preferred.

Dismissing the appeal,

Held :

When the auction is for such a large amount, running in crores of rupees, nobody can expect the auction-purchaser to pay the amount in cash on the fall of the hammer. So far as the instant case is concerned, facts would reveal that the auction-purchaser had paid Rs 2.40 crores, may be not be in cash, but by way of drafts on 8-10-2010 and the balance amount i.e. 75% of the bid amount was also paid on 23-10-2010. Consequently, the auction-purchaser had complied with the provisions of Order 21 Rules 84 and 85 CPC. (Para 14)

Order 21 Rule 89 CPC, 1908 gives a final opportunity to the judgment-debtor to save his property by setting the sale aside before the confirmation upon the terms of satisfying the decretal debt and of paying compensation to the auction-purchaser. Rules 89 to 92 of Order 21 deal with setting aside of sale. When a property is sold in execution of a decree, an application for setting aside the sale can be made under those provisions by the persons affected on the grounds mentioned therein. Such an application has to be made within the prescribed period of limitation, the provisions mentioned therein are in the nature of concession and those provisions must be strictly complied with before a sale is set aside before confirmation. On setting aside the sale under Order 21 Rule 89 CPC the property continues to be the property of the judgment-debtor. (Para 16)

Order 21 Rule 89 CPC is, therefore, intended to: (*i*) to save the judgment-debtor from the threatened deprivation of his property, (*ii*) to satisfy the claim of the decree-holder, and (*iii*) to compensate the auction-purchaser. Rule 89 of Order 21 CPC also applies to a sale in execution of a decree for payment of money and an order of sale of property under the Partition Act, 1893 is a deemed decree under the Code and, therefore, an application for setting aside sale in execution of such decree is maintainable. It also applies to a decree passed in terms of an award in a partition suit, so also to a sale in execution of mortgage decree. (Para 17)

In this case, there was no reference at all to the provisions of Order 21 Rule 89 in the application filed by the appellant on 1-12-2010. Be that it may, even then the appellant had not complied with the mandatory requirements of depositing the amount. Order 21 Rule 89(1)(*a*) requires the applicant to deposit in Court 5% of the purchase money for payment to the auction-purchaser. Deposit of the requisite amount in the Court is a condition precedent or a sine qua non to an application for setting aside the execution of sale and such a amount must be paid within a period specified in the rule and if the deposit is made after the time-limit, the application must be dismissed. The deposit made under Rule 89 of Order 21 CPC should be unconditional and unqualified and the decree holder or the auction-purchaser should be able to get the amount at once. (Para 22)

The rule is in the nature of a concession shown to the judgment-debtor, so he has to strictly comply with the requirements thereof and a sale will not be set aside unless the entire amount specified in sub-rule (1) is deposited within 60 days from the date of the sale and, if it is beyond 60 days, the Court cannot allow the application. The appellant judgment-debtor did not pay the amount within the stipulated time and he only made an application on

1-12-2010 without depositing the amount and hence the Court cannot entertain such an application and bound to confirm the sale which, in this case, the Court did on 23-10-2010. (Para 23). *Ram Karan Gupta* v. *J.S. Exim Ltd.*, (2012) 13 SCC 568: AIR 2013 SC 24: (2014) 5 SCC (Civ) 662: (2012) 6 CTC 710: (2013) 1 LW 456: (2013) 123 AIC 107.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 3-12-2012]

Ram Karan Gupta v. Dayanand Gupta, 2012 AIR CC 265 (Del), affirmed

Challamane Huchha Gowda v. M.R. Tirumala, (2004) 1 SCC 453; Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel, AIR 1968 SC 372; Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71, followed

P.K. Unni v. Nirmala Industries, (1990) 2 SCC 378, held, overruled

— **Or. 21 R. 85** *See also* Or. 21 R. 84

[185] — Or. 21 R. 89 — Court's power to set aside sale on deposit of required amount by judgment-debtor is discretionary — Discretion if properly exercised — *Auction-sale of property in favour of petitioner confirmed — But one opportunity given by High Court, pursuant to which judgment-debtors immediately deposited the amount — Exercise of discretion by High Court, having regard to facts and circumstances, proper and in accordance with law — No substantial question of law involved in SLP preferred by purchaser — Held, no interference of Supreme Court under Art. 136 of the Constitution with High Court's exercise of discretion called for — Judgment-debtors should not be made to lose their property — Constitution of India, Art. 136. Sukumar De* v. *Bimala Auddy*, (2014) 1 SCC 584: (2014) 1 SCC (Civ) 493: AIR 2014 SC 1000: (2014) 4 Mah LJ 501: (2014) 102 ALR 677: (2014) 134 AIC 148: (2014) 3 MPLJ 290.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **A.K. Sikri**, JJ. [Date of decision: 28-10-2013]

Order dated 8-6-2004 (Cal), affirmed

[186] — Or. 21 R. 89 — Setting aside of auction-sale on application by judgment-debtor — Object of — *Held, is intended to: (i) save judgment-debtor from threatened deprivation of his property, (ii) satisfy claim of decree-holder, and (iii) compensate auction-purchaser*

Order 21 Rule 89 CPC, 1908 gives a final opportunity to the judgment-debtor to save his property by setting the sale aside before the confirmation upon the terms of satisfying the decretal debt and of paying compensation to the auction-purchaser. Rules 89 to 92 of Order 21 deal with setting aside of sale. When a property is sold in execution of a decree, an application for setting aside the sale can be made under those provisions by the persons affected on the grounds mentioned therein. Such an application has to be made within the prescribed period of limitation, the provisions mentioned therein are in the nature of concession and those provisions must be strictly complied with before a sale is set aside before confirmation. On setting aside the sale under Order 21 Rule 89 CPC the property continues to be the property of the judgment-debtor. (Para 16)

Order 21 Rule 89 CPC is, therefore, intended to: (*i*) to save the judgment-debtor from the threatened deprivation of his property, (*ii*) to satisfy the claim of the decree-holder, and (*iii*) to compensate the auction-purchaser. Rule 89 of Order 21 CPC also applies to a sale in execution of a decree for payment of money and an order of sale of property under the Partition Act, 1893 is a deemed decree under the Code and, therefore, an application for setting aside sale in execution of such decree is maintainable. It also applies to a decree passed in terms of an award in a partition suit, so also to a sale in execution of mortgage decree. (Para 17). *Ram Karan Gupta* v. *J.S. Exim Ltd.*, (2012) 13 SCC 568: AIR 2013 SC 24: (2014) 5 SCC (Civ) 662: (2012) 6 CTC 710: (2013) 1 LW 456: (2013) 123 AIC 107.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 3-12-2012]

Challamane Huchha Gowda v. M.R. Tirumala, (2004) 1 SCC 453; Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel, AIR 1968 SC 372, followed

[187] — Or. 21 R. 89 — Time for making requisite deposit in court, reiterated, is the same as prescribed under Art. 127 of Limitation Act for filing application for setting aside court sale i.e. 60 days from date of sale — Non-deposit within that period would result in dismissal of application — Hence, sale restored — *Limitation Act, 1963, Art. 127 — Constitution of India, Art. 227*

Although Order 21 Rule 89 CPC does not prescribe any period either for making the application or the required deposit, Article 127 of the Limitation Act now prescribes 60 days as the period within which such an application should be made. In absence of any separate period prescribed for making the deposit, the time to make the deposit and that for making the application would be the same. The deposit of the requisite amount in the court is a condition precedent or a sine qua non to application for setting aside the execution of sale and such an amount must be deposited within the prescribed time for making the application otherwise the application must be dismissed. (Paras 6 and 7)

In the present case, the High Court committed grave error in law in allowing the writ petition for reconsideration of the petition under Order 21 Rule 89 CPC. In absence of required deposit made by the judgment-debtor within the time mandated by law, such an exercise would be only an exercise in futility because the executing court does not have any option but to reject the petition. (Para 8). *Annapurna* v. *Mallikarjun*, (2014) 6 SCC 397: (2014) 3 SCC (Civ) 572: (2014) 6 Mah LJ 551: (2014) 117 Cut LT 1105: (2014) 105 ALR 258: (2014) 138 AIC 79: (2014) 5 LW 10: (2014) 4 MPLJ 498.

Bench Strength **2**. Coram: *A.R. Dave* and **Shiva Kirti Singh**, JJ. [Date of decision: 11-4-2014]

Ram Karan Gupta v. J.S. Exim Ltd., (2012) 13 SCC 568; Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71, followed

Mallikarjun v. Amarawwa, WP No. 10550 of 2006, order dated 18-2-2010 (KAR), reversed

[188] — Or. 21 Rr. 89, 69 & 83 and S. 100 — Failure of appellant judgment-debtor (JD) to deposit decretal amount despite repeated numerous opportunities given by court — Held on facts, sufficient opportunities having been provided to judgment-debtor to deposit the amount, High Court in execution second appeal justified in vacating its interim order staying the sale of the JD's property — Supreme Court stay of such sale, also vacated

A suit filed in 1955 by the respondent-plaintiff was decreed. The execution case was filed by the respondent decree-holder in 1962. When auction notice was published, the appellant judgment-debtor filed an application under Order 21 Rule 83 for postponement of sale. Thereupon, the parties came to an understanding in 1964 by agreeing that the judgment-debtor shall deposit the decretal amount in four equal monthly instalments, failing which, the property would be sold without proclamation. The judgment-debtor failed to deposit the amount within the specified time. His application for further extension of time was rejected and a sale proclamation was directed to be issued by the executing court. Stay of the proceedings sought by the judgment-debtor was refused, and the property was attached and sold in 1965. An application under Order 21 Rule 69 was filed by the judgment-debtor alleging irregularities in conduct of the auction sale. The application was allowed by the executing court in 1969 but first appeal thereagainst was allowed in 1970. In second appeal preferred by the judgment-debtor the High Court by an interim order of stay gave an opportunity to the appellant judgment-debtor to pay the entire decretal amount within two months from the date of passing of the interim order, failing which it was directed that the said order would stand automatically vacated. The entire decretal amount however could not be paid within the specified period, but was deposited in the court after that period was over. The High Court dismissed the execution second appeal.

Dismissing the present appeal,

Held :

This is one of the cases which shows how miserable a decree-holder becomes in the execution proceedings. It is really deplorable that the heirs of the respondent-plaintiff who had filed the original suit somewhere in 1955 are still unable to get the decretal amount. Sufficient opportunities had been provided to the appellant judgment-debtor to pay the decretal amount but every time the appellant judgment-debtor failed to pay the decretal amount within the period prescribed, this matter should have an end at this stage and therefore, the appeal is dismissed and the stay granted by the Supreme Court on 26-3-2007 also stand vacated. (Para 13). *Manju Swarup* v. *Bhupenshwar Prasad*, (2013) 10 SCC 664: (2014) 1 SCC (Civ) 83: AIR 2013 SC Supp 26: (2014) 2 Mah LJ 518: (2014) 2 MPLJ 8.

Bench Strength **2**. Coram: **Anil R. Dave** and *A.K. Sikri*, JJ. [Date of decision: 20-9-2013]

Dewan Prem Chand v. Lala Hari Kishan Dass, Execution Second Appeal No. 742 of 1970, order dated 2-2-2006 (All), affirmed

— Or. 21 R. 89(1)(a) *See also* Or. 21 R. 84

[189] — Or. 21 R. 89(1)(a) — Auction-sale of immovable property in partition suit — Setting aside of sale — Deposit of 5% of purchase amount by judgment-debtor — Held, is sine qua non for entertaining an application for setting aside execution of sale — *Said rule being in the nature of concession to judgment-debtor, he has to strictly comply with its requirements — Deposit is unconditional, unqualified and decree-holder or auction-purchaser should be able to get said amount at once*

In this case, there was no reference at all to the provisions of Order 21 Rule 89 in the application filed by the appellant on 1-12-2010. Be that it may, even then the appellant had not complied with the mandatory requirements of depositing the amount. Order 21 Rule 89(1)(*a*) requires the applicant to deposit in Court 5% of the purchase money for payment to the auction-purchaser. Deposit of the requisite amount in the Court is a condition precedent or a sine qua non to an application for setting aside the execution of sale and such a amount must be paid within a period specified in the rule and if

the deposit is made after the time-limit, the application must be dismissed. The deposit made under Rule 89 of Order 21 CPC should be unconditional and unqualified and the decree holder or the auction-purchaser should be able to get the amount at once. (Para 22)

The rule is in the nature of a concession shown to the judgment-debtor, so he has to strictly comply with the requirements thereof and a sale will not be set aside unless the entire amount specified in sub-rule (1) is deposited within 60 days from the date of the sale and, if it is beyond 60 days, the Court cannot allow the application. The appellant judgment-debtor did not pay the amount within the stipulated time and he only made an application on 1-12-2010 without depositing the amount and hence the Court cannot entertain such an application and bound to confirm the sale which, in this case, the Court did on 23-10-2010. (Para 23). *Ram Karan Gupta* v. *J.S. Exim Ltd.*, (2012) 13 SCC 568: AIR 2013 SC 24: (2014) 5 SCC (Civ) 662: (2012) 6 CTC 710: (2013) 1 LW 456: (2013) 123 AIC 107.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 3-12-2012]

Dadi Jagannadham v. Jammulu Ramulu, (2001) 7 SCC 71, followed

***Followed in** Annapurna v. Mallikarjun, (2014) 6 SCC 397*

[190] — Or. 21 R. 92(2) — Setting aside of auction-sale on application by judgment-debtor — Deposit of purchase money — Limitation — Held, is 60 days — *Court can exercise discretion to entertain application only if entire purchase money is deposited within 60 days from the date of sale along with an application — In instant case, appellant judgment-debtor made an application within 60 days without depositing said money — Hence, held, court is bound to confirm sale — Limitation Act, 1963, S. 127* (Paras 19 and 20). *Ram Karan Gupta* v. *J.S. Exim Ltd.*, (2012) 13 SCC 568: AIR 2013 SC 24: (2014) 5 SCC (Civ) 662: (2012) 6 CTC 710: (2013) 1 LW 456: (2013) 123 AIC 107.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 3-12-2012]

— Or. 21 Rr. 97, 99 & 101 *See* Or. 21 R. 35

[191] — Or. 22 Rr. 3 & 11 — Suit for declaration of allotment and delivery of possession of plot (against respondent Trust) in lieu of large plot of land belonging to father of *C* which had been acquired by respondent Trust — Death of appellant *C* during pendency of appeal — *Exclusion of right of other legal heirs of C's father N, except wife of C, to get substituted in said appeal under alleged deed of family settlement entered into between legal representatives of father of C and other legal heirs of C — Reliability of alleged settlement in respect of. Karam Kaur* v. *Jalandhar Improvement Trust*, (2014) 6 SCC 409: (2014) 3 SCC (Civ) 575: (2014) 6 Mah LJ 542: (2014) 105 ALR 472: (2014) 139 AIC 61: (2014) 4 MPLJ 522.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Kurian Joseph*, JJ. [Date of decision: 28-4-2014]

[192] — Or. 22 Rr. 3 & 11 and S. 100 — Abatement of second appeal on death of appellant-plaintiff therein i.e. *C* — Substitution of legal representatives (i.e. LRs) of *C* in that appeal — Application for — Filing of, after 7 yrs of death of *C* — Condonation of delay in filing said substitution application — Denial of, by High Court — Propriety — *Application for bringing on record LRs of C was filed after about six-and-a-half years of death of C by Respondents 2 and 3 herein — Faced with situation that Respondents 2 and 3 were merely pro forma respondents in second appeal and no relief had been claimed against them, said respondents withdrew said substitution application — Consequently, second appeal was dismissed for non-prosecution — Thereafter, substitution application was filed by widow of C (i.e. appellant herein) after 7 yrs of death of C, stating that vide deed of family settlement dt. 21-01-2010 executed between LRs of N (father of C) including Respondents 2 to 5 herein and other legal heirs of C, the right to sue survived only to her — Suit had been filed by C for declaration of allotment and grant of possession of plot in lieu of large plot of land belonging to father of C which had been acquired by respondent Trust — Held, the so-called family settlement could not be relied upon to exclude the other legal heirs who had a right to be substituted on death of C — Widow of C had knowledge of pendency of second appeal — Hence, impugned judgment of High Court rejecting widow's applications: (i) for condonation of delay of 7 yrs in preferring substitution application, and (ii) for setting aside the order dismissing second appeal for non-prosecution, held, was proper — Plea raised by widow: (i) that she was an illiterate lady and was informed by her husband that his appeal was not likely to be taken up for next 20 yrs and their counsel would intimate the date whenever it was listed, and (ii) that she was not aware that LRs were required to be brought on record after death of her husband, held, not tenable — Limitation Act, 1963, S. 5* (Paras 12 to 15). *Karam Kaur* v. *Jalandhar Improvement Trust*, (2014) 6 SCC 409: (2014) 3 SCC (Civ) 575: (2014) 6 Mah LJ 542:

(2014) 105 ALR 472: (2014) 139 AIC 61: (2014) 4 MPLJ 522.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Kurian Joseph*, JJ. [Date of decision: 28-4-2014]

Ramesh Chander v. Jalandhar Improvement Trust, Civil Misc. No. 11669-C of 2010 in RSA No. 1908 of 1995, decided on 8-7-2011 (P&H), affirmed

[193] — Or. 22 R. 4 — Abatement of suit — Procedure on failure to substitute LRs of deceased defendants — Power to relax — Failure of plaintiff to file substitution application to substitute LRs of one of the defendants who did not contest — Effect on maintainability of the suit — Necessity of substitution of LRs of defendant against whom case proceeded ex parte — *Held, in order to expedite process of law, courts may exempt plaintiff from substituting LRs of a defendant who failed to appear or contest the suit — Development of law and amendment discussed — In the circumstances of the case, held, court ought to have exercised its power to avoid abatement of suit by exempting plaintiff from necessity of substituting LRs of deceased defendant — Held, failure to bring LRs of defendant against whom case proceeded ex parte did not result in abatement of suit as it can be dispensed with* (Paras 3, 4 and 9). *Mata Prasad Mathur* v. *Jwala Prasad Mathur*, (2013) 14 SCC 722: (2014) 3 SCC (Civ) 522: (2013) 2 CTC 217: (2013) 97 ALR 719: (2013) 2 LW 615: (2013) 124 AIC 109.

Bench Strength **2**. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 20-2-2013]

Mata Prasad Mathur Mand v. Jawala Prasad Mathur, SA No. 1454 of 2005, decided on 21-4-2006 (MP), affirmed

— Or. 22 Rr. 4 and 9 *See* CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP — Abatement of appeal/SLP against dead person, Art. 136, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

[194] — Or. 22 R. 10 or Or. 30 R. 4(2) — Relative scope — Continuation of suit by person upon whom interest devolved during pendency of suit — Leave of court — *Suit filed by partnership firm comprising father and son — Father died during pendency of suit — Under terms of partnership deed, though firm stood dissolved but sole surviving partner (appellant son) became entitled to continue firm's business as proprietary concern with all assets and liabilities, when only legal heir of deceased viz. daughter was not interested in firm's assets and liabilities or in joining the firm — In the circumstances, held, complete devolution of interest took place in favour of appellant partner — Hence appellant entitled to grant of leave of court to proceed with suit — Subordinate court justified in granting leave and allowing appellant's prayer for necessary amendment of plaint — Or. 30 R. 4(2) not attracted to facts of the case — Partnership Act, 1932, S. 29. AVK Traders* v. *Kerala State Civil Supplies Corpn. Ltd.*, (2013) 15 SCC 217: (2014) 5 SCC (Civ) 220: (2013) 6 CTC 418: (2013) 4 KLT 484: (2013) 101 ALR 712: (2013) 132 AIC 58: (2014) 1 LW 195.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 29-10-2013]

Kerala State Civil Supplies Corpn. v. AVK Traders, OP (C) No. 631 of 2012, order dated 29-3-2012 (Ker), reversed

— Or. 22 R. 11 *See* Or. 22 R. 3

— Or. 23 — Compromise decree *See* RENT CONTROL AND EVICTION — 'Eviction', (2013) 14 SCC 757: (2014) 3 SCC (Civ) 526

— Or. 23 R. 3 *See* S. 47; 96(3); 148

See also CONSTITUTION OF INDIA, Arts. 129, 142, 32 and 136, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Or. 23 R. 3 and S. 80 *See* ADMINISTRATIVE LAW — 'Promissory Estoppel', (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9 and 10, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665

— Or. 34 R. 7 *See* LIMITATION — 'Limitation Act, 1963', Art. 61, (2014) 9 SCC 185: (2014) 4 SCC (Civ) 750

[195] — Or. 37 — Summary suit — Leave to defend — Principles to be followed while granting leave — *High Court granting conditional leave to defend to the appellant — Since suit filed by respondent raised questions which, prima facie, appear to be triable, following decision in* Mechelec Engineers & Manufacturers, *(1976) 4 SCC 687, held, High Court erred in granting conditional leave to defend subject to deposit of amount mentioned in the cheque — Hence, order of High Court set aside and appellant granted unconditional leave to defend* (Paras 2, 4 and 5). *R. Saravana Prabhu* v. *Videocon Leasing and Industrial Finance Ltd.*, (2013) 14 SCC 606: (2014) 5 SCC (Civ) 438.

Bench Strength **2**. Coram: *Altamas Kabir* and *Cyriac Joseph*, JJ. [Date of decision: 5-1-2009]

Mechelec Engineers & Manufacturers v. Basic Equipment Corpn., (1976) 4 SCC 687, followed

— Or. 37 R. 3(5) *See* Or. 37 R. 4

[196] — Or. 37 R. 4 and 3(5) — Summary procedure — Leave to defend not applied for — Court's power to set aside decree and grant leave to defend the suit — "Special circumstances" — What are — Special circumstances, held, must be shown to exist which prevented defendant from applying for leave to defend — *Respondent Company's summary suit against defendant Company (appellant) for payment of money due with interest @ 30% p.a. decreed by Single Judge of High Court in view of defendant's*

failure to file application for leave to defend and to appear despite service of summons — Application filed by Company Secretary of defendant for setting aside decree and grant of leave to defend stating that in compliance with an earlier order passed by Company Judge in company petition filed under Ss. 433 and 434 of Companies Act by respondent, a specified amount had been deposited by defendant and that the then Executive Assistant to Chairman of defendant having resigned, proper instruction could not be given to advocate engaged for defending suit as a result of which no application for leave to defend could be filed — Application rejected by Single Judge and appeal before Division Bench of High Court dismissed — Held, application did not disclose any special circumstance — Even liability of appellant to pay amount claimed in plaint was not contested and mere fact that one of the officials of appellant had resigned, would not constitute a valid ground to negate policy underlying Or. 37 in general and R. 3(5) in particular — In view of this position, defendant's submission that even in absence of application for leave to defend, Single Judge of High Court was duty-bound to scrutinise respondent's claim and could have decreed suit only on being satisfied that claim was bona fide and not vexatious, cannot be accepted so as to reverse impugned judgment of High Court (Paras 12 and 13). *TVC Skyshop Ltd.* v. *Reliance Communication & Infrastructure Ltd.*, (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234.

Bench Strength **2**. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 15-7-2013]

TVC Skyshop Ltd. v. Reliance Communication and Infrastructure Ltd., Appeal No. 840 of 2007 in Summons For Judgment No. 361 of 2006 in Summary Suit No. 1989 of 2006, decided on 16-4-2008 (Bom), affirmed

Neebha Kapoor v. Jayantilal Khandwala, (2008) 3 SCC 770: (2008) 1 SCC (Civ) 929, distinguished on facts

— Or. 39 R. 1 *See also* Or. 43 R. 1(r) and Or. 39 R. 1

[197] — Or. 39 Rr. 1 and 2 — Interim injunction in respect of property — Maintainability — Need for some interest in the property — Relevant considerations for granting — Principles reiterated — Whether made out on facts — *Petitioner sought injunction against respondent-defendants from selling, alienating, transferring and creating third-party rights during pendency of his suit against termination of agreement of sale of suit property in his favour entered into with some of the co-sharers of the property — But 30 yrs prior thereto, erstwhile owner of property had already executed an agreement of sale of the property in favour of a company (V) in pursuance of which possession had also been delivered and defendant R-1 claimed the property through V — Held, petitioner having neither title, nor possession of property, nor prima facie case, nor balance of convenience in his favour, not entitled to injunction, whereas V prima facie not only has got interest in the property but also actual physical possession of the same — Specific Relief Act, 1963, S. 38. Ramesh Vajabhai Rabari* v. *Pratiksha Real Estate (P) Ltd.*, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80.

Bench Strength **2**. Coram: **Gyan Sudha Misra** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

Pratiksha Real Estate (P) Ltd. v. Ramesh Vajabhai Rabari, Appeal No. 683 of 2012, decided on 18-6-2013 (Bom), affirmed

Ramesh Vajabhai Rabari v. Betram Peter D'Mello, Notice of Motion No. 1673 of 2007 in Suit No. 1280 of 2007, decided on 29-6-2012 (Bom), reversed

[198] — Or. 39 Rr. 1 and 2 — Temporary injunction against alienation of suit property and dispossession — *After the decree for divorce between appellant wife and respondent husband became final, appellant wife filed suit for permanent injunction and also filed application under Or. 39 Rr. 1 and 2 for temporary injunction restraining respondent from alienating suit property (a house owned by respondent) — No provision in divorce decree for maintenance of appellant including right of residence in the suit property — Appellant's petition under S. 125 CrPC for grant of maintenance had been dismissed — Trial court allowed application for temporary injunction — But lower appellate court vacated restraint imposed by trial court against alienation of suit property — High Court confirmed lower appellate court's order — High Court held that once divorce decree passed, matrimonial relation between the parties ceased and appellant was disentitled to occupy the suit property owned by the respondent as of right and that in the absence of stipulation in the divorce decree, appellant not entitled to order of injunction against her dispossession — Held, no interference called for — In absence of provision in divorce decree for maintenance of appellant, injunction granted by trial court rightly vacated by lower appellate court — Yet, appellant having entered into property as wife of respondent, even though after passing of the divorce decree she may not have a legal right to continue to remain in possession, respondent cannot be given liberty to forcibly evict her — Eviction possible only by following procedure established by law* (Paras 9 and 10). *Ranjit Kaur* v. *Major Harmohinder Singh*, (2011) 15 SCC 95: (2014) 2 SCC (Civ) 246: (2012) 111 AIC 127.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 2-11-2011]

Harmohinder Singh v. Ranjit Kaur, SLP (C) No. 4193 of 2000, order dated 16-3-2000 (SC), partly reversed

— Or. 39 Rr. 1, 2 and Or. 43 R. 1(r) *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — Interim/Interlocutory orders, Art. 136, (2014) 1 SCC 199: (2014) 1 SCC (Civ) 62

— Or. 39 R. 2 *See* Or. 39 R. 1; Or. 43 R. 1(r)

[199] — Or. 41 Rr. 1, 31 & 33 and S. 96 — First appeal — Proper mode of disposal — Confusion/Mix-up with second appeal — *High Court seized only of first appeal as mentioned in grounds of appeal before High Court, but High Court passed impugned order assuming it to be second appeal — Submissions made by appellants before High Court not considered nor reasons for conclusions recorded indicated — Held, impugned judgment is not sustainable and is set aside — Matter remanded to High Court for a decision on merits after giving due opportunity of hearing to all parties. Shakuntalabai Derkar* v. *Maroti Dewaji Wadaskar*, (2014) 1 SCC 602: (2014) 1 SCC (Civ) 497.

Bench Strength **2**. Coram: *S.S. Nijjar* and *P.C. Ghose*, JJ. [Date of decision: 22-4-2013]

Shakuntalabai v. Maroti Dewaji Wadaskar, First Appeal No. 339 of 2009, order dated 24-6-2009 (Bom), reversed

[200] — Or. 41 Rr. 1(3) & 5 — Money decree directing payment of Rs 100 crores — Appeal by judgment-debtor — Prayer for complete stay of decree — Exercise of discretion by appellate court — *On facts, discretion, held, validly exercised by High Court by not entertaining petitioners' (judgment-debtors) prayer for complete stay of decree and instead directing petitioners to deposit Rs 20 crores and furnish bank guarantee for balance decretal amount of Rs 80 crores — Exercise of discretion is in consonance with settled principles* (Para 3). *Times Global Broadcasting Co. Ltd.* v. *Parshuram Babaram Sawant*, (2014) 1 SCC 703: (2014) 1 SCC (Civ) 662.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 14-11-2011]

Times Global Broadcasting Co. Ltd. v. Parshuram Babaram Sawant, Civil Application No. 3994 of 2011 in First Appeal No. 1811 of 2011, order dated 28-9-2011 (Bom), affirmed

— Or. 41 R. 2 *See also* CONSTITUTION OF INDIA — 'Article 226' — Appeal against/Review of orders passed under Art. 226/Writ appeals/LPAs, Art. 226, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Or. 41 Rr. 2 and 24 — Grounds stated in memorandum of appeal — If not established by evidence, cannot be considered *See* CONSTITUTION OF INDIA — 'Article 136' — Procedure to be followed re Art. 136 — Pleadings and Particulars, Art. 136, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— Or. 41 R. 4 *See* S. 96

— Or. 41 R. 5 *See* Or. 41 R. 1(3)

— Or. 41 R. 5 and Or. 39 R. 1 *See* CONSUMER PROTECTION — 'Consumer Protection Act, 1986', S. 19 second proviso, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598

[201] — Or. 41 Rr. 17, 19 and 21 — Appeal — Non-appearance of appellant or respondent — Consequence — *If appellant does not appear, appeal has to be dismissed for default without going into merits under R. 17(1) — But if respondent does not appear, appeal can be heard ex parte on merits under R. 17(2) — If appellant applies under R. 19 for readmission of appeal or respondent applies under R. 21 for rehearing, court has to be satisfied that appellant or respondent was prevented by sufficient cause from appearing — If appellate courts finds no sufficient cause shown by appellant or respondent, application liable to be rejected. Harbans Pershad Jaiswal* v. *Urmila Devi Jaiswal*, (2014) 5 SCC 723: (2014) 3 SCC (Civ) 329: AIR 2014 SC 3032: (2014) 6 Mah LJ 29: (2014) 105 ALR 462: (2014) 139 AIC 153: (2014) 4 LW 791: (2014) 4 MPLJ 265.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 21-4-2014]

Urmila Devi v. Harbans Pershad Jaiswal, CCCA No. 4 of 1994, order dated 31-7-2006 (AP), affirmed

— Or. 41 R. 19 *See* Or. 41 R. 17; S. 100

— Or. 41 R. 20 *See* Or. 1 R. 9; S. 96

— Or. 41 R. 21 *See* Or. 41 R. 17

— Or. 41 R. 23-A and S. 100 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Judges vis-à-vis Judges, (2013) 12 SCC 392: (2014) 1 SCC (Civ) 476

— Or. 41 Rr. 23-A and 23 *See also* CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Or. 41 Rr. 23-A, 23 and S. 11 *See* PRACTICE AND PROCEDURE — 'Remand', (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550

[202] — Or. 41 Rr. 23-A, 24, 25, 33 & 27 — Power of first appellate court to remand the matter back to trial court to take additional evidence with corresponding right to rebut that evidence — *Held, on facts, most of the documents which are sought to be adduced by way of evidence are on record — High Court, being the first appellate court, is a court of both fact and law, it will be in the interest of justice for the High Court to decide the controversy in accordance with law as early as possible — An order of remand will merely prolong the proceedings between the parties — Time-bound disposal of appeal by High Court directed — Hindu Marriage Act, 1955, S. 12. Rajinder Sharma* v. *Arpana Sharma*, (2011) 15 SCC 300: (2014) 2 SCC (Civ) 464: AIR 2011 SC 3161: (2011) 87 ALR 886: (2011) 104 AIC 40.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 4-7-2011]

— Or. 41 Rr. 24, 25 and 27 *See* Or. 41 R. 23-A

[203] — Or. 41 R. 27(1)(aa) and S. 96 — Production of additional evidence at appellate stage — Grant of permission as to — Conditions precedent therefor under Or. 41 R. 27(1)(aa), restated — *Where evidence sought to be produced in first appeal by the party concerned was within knowledge of that party at the stage of trial, rejection of that party's application to adduce said evidence at appellate stage by High Court, held, was proper. State of Karnataka* v. *K.C. Subramanya*, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725: (2014) 102 ALR 248: (2014) 133 AIC 183: (2014) 1 LW 103.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and *P.C. Ghose*, JJ. [Date of decision: 16-9-2013]

— Or. 41 R. 31 *See* Or. 41 R. 1; S. 96

— Or. 41 R. 33 *See* Or. 41 R. 1; Or. 41 R. 23-A; S. 96

— Or. 41 R. 33 and Or. 20 R. 12-A *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 16(c), 20(1), (2) and 21(2), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

[204] — Or. 43 R. 1(r) and Or. 39 R. 1 — Vacation of interim order after disposal of suit — *Suit relating to airport premises — Airport authorities settling the matter with the respondent, resulting in dismissal of suit — Interim restraint order against airport authorities, passed by the impugned order of High Court in its appellate jurisdiction, however not vacated — As the suit was dismissed, said interim order, held, cannot be sustained. Mumbai International Airport (P) Ltd.* v. *Indamer Co. (P) Ltd.*, (2014) 13 SCC 720: (2014) 5 SCC (Civ) 775.

Bench Strength **2**. Coram: *S.S. Nijjar* and *P.C. Ghose*, JJ. [Date of decision: 15-4-2013]

Mumbai International Airport (P) Ltd. v. Indamer Co. (P) Ltd., Appeal From Order No. 418 of 2008 in Notice of Motion No. 82 of 2007 in Short Cause Suit No. 45 of 2007, order dated 2-7-2008 (Bom), reversed

[205] — Or. 43 R. 1(r) and Or. 39 Rr. 1 & 2 — Prayer for interim injunction restraining respondent Corporation from removing foodgrains from godown rented out by appellant unless they paid storage charges and refunded security deposit, to enable appellant to exercise unpaid lien thereon — *Trial court and High Court denied the injunction, but High Court admitted appeal permitting removal of foodgrains only after proper inventory — By interim order of Supreme Court, respondent had already deposited Rs 30 lakhs with trial court — Held, for sufficiently protecting interest of appellant, respondent directed to provide security of Rs 68,25,468 i.e. storage charges to satisfaction of trial court, and 50% of amount already deposited i.e. Rs 15 lakhs permitted to be withdrawn by appellant without furnishing security as, foodgrains must have been already removed by respondent — Also open to appellant to claim refund of security deposit from respondent by filing application before trial court to be decided after hearing parties — Trial court to dispose of civil suit preferably within six months of Supreme Court order — Impugned order quashed and set aside — Constitution of India, Arts. 136 and 14 — Contract Act, 1872, Ss. 148, 170 and 171. Buildwell Corpn.* v. *Food Corporation of India*, (2014) 1 SCC 693: (2014) 1 SCC (Civ) 655.

Bench Strength **2**. Coram: *A.R. Dave* and *Dipak Misra*, JJ. [Date of decision: 2-9-2013]

Buildwel Corpn. v. Food Corporation of India, Appeal from Order No. 289 of 2013, order dated 25-7-2013 (Guj), reversed

— Or. 47 *See* S. 114

— Or. 47 R. 1 — Review *See* PRACTICE AND PROCEDURE — 'Delay/Laches/Limitation', (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210

[206] — Or. 47 R. 1 and S. 96 — Review — Condonation of delay — Review against order in regular first appeal — On facts, held, delay explained properly — *Sufficient cause was shown and proved before Single Judge — Delay only for 53 days, held, would certainly not fall in the category of exorbitant or inordinate delay — Looking to short delay, as a routine, it should have been condoned and the matter should have been heard on merits — Limitation Act, 1963, S. 5* (Para 8). *S. Ganesharaju* v. *Narasamma*, (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 27-3-2012]

S. Chandra Raju v. S. Subba Raju, RFA No. 1476 of 2005, decided on 15-7-2008 (KAR); S. Ganesharaju v. S. Chandra Raju, Review Petition No. 369 of 2008 in RFA No. 1476 of 2005, order dated 12-3-2009 (KAR), reversed

[207] — Or. 47 R. 1 Expln. — Review — Ground for — Order sought to be reviewed must suffer from error apparent on face of order — In absence of such error apparent, even an erroneous judgment/order cannot be a ground for review and finality of judgment order cannot be disturbed

In view of the Explanation to Rule 1 of Order 47 CPC also, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, *finality attached to the judgment/order cannot be disturbed.* (Para 52). *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

— Or. 47 R. 5 *See* S. 122

CIVIL SUIT

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— Or. 12 R. 6 and Or. 7 R. 2, (2011) 15 SCC 273

— Or. 18 R. 4, (2013) 15 SCC 198

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CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW

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1. ANTI-SUIT INJUNCTION

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2. ARBITRATION

— International arbitration — Exclusivity of supervisory jurisdiction of courts of country whose curial law is applicable/where juridical seat of arbitration is situate — Anti-suit injunction action against courts of any other country — Maintainability of *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

— International arbitration — Place or Juridical seat or "seat" of arbitration and applicable curial law i.e. procedural law governing arbitration — Determination of *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

3. CHILD CUSTODY

— Repatriation of child on the principle of comity of courts *See* 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

[208] — Repatriation of child on the principle of comity of courts — Removal of child by parent from one country to another in contravention of court orders of that country — Course, in such situation, to be followed by courts of recipient country — Law laid down in *V. Ravi Chandran (2)*, (2010) 1 SCC 174, applied — *Held, court of recipient country can either conduct elaborate enquiry on question of custody or it can deal with matter summarily ordering return of child to country of removal and let aspects relating to child's welfare be investigated by court in his own country — High Court, in present case, in habeas corpus petition filed by respondent father of child exercised its jurisdiction summarily and directed appellant mother to return child to USA (country from where child was removed) — Course adopted by High Court, held, correct in view of law laid down in* V. Ravi Chandran (2) case — *Constitution of India — Guardians and Wards Act, 1890, Ss. 7, 9, 14 and 17 — CPC, 1908, Ss. 13 and 14. Arathi Bandi* v. *Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475: AIR 2014 SC 918.

Bench Strength **2**. Coram: **S.S. Nijjar** and *P.C. Ghose*, JJ. [Date of decision: 16-7-2013]

V. Ravi Chandran (2) v. Union of India, (2010) 1 SCC 174: (2010) 1 SCC (Civ) 44, applied

Surinder Kaur Sandhu v. Harbax Singh Sandhu, (1984) 3 SCC 698: 1984 SCC (Cri) 464, followed

H. (Infants), In re, (1966) 1 WLR 381: (1966) 1 All ER 886 (CA), held, approved

Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479: (2011) 3 SCC (Civ) 396: (2011) 2 SCC (Cri) 1033, distinguished

Bandi Jagadrakshaka Rao v. Deptt. of Home, WP No. 25479 of 2009, order dated 24-9-2010 (AP), modified

Law Commission of India Report No. 218 entitled "Need to Accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)", cited

[209] — Repatriation of child on the principle of comity of courts — Removal of child by parent from one country to another in contravention of court orders of that country — Law laid down in *V. Ravi Chandran (2)*, (2010) 1 SCC 174, applied — *Appellant mother who removed child from USA to India in defiance of orders passed by USA courts, held, entitled to no relief in Indian courts — Child in present case, when removed from USA was 3 yrs of age and now 8 yrs old studying at one of the best English medium schools in India — Interview of child by Supreme Court revealed that child was thoroughly brainwashed against father — It was only after father spent some time alone with child that child was not totally averse to meeting the father again — Held, in such circumstances, court is left with making a very unpleasant decision — Either way, certain collateral damage being caused to the child cannot be avoided — Hence, order of High Court in habeas corpus writ petition filed by husband directing appellant mother to return child to USA and to submit to USA Court, upheld — Directions given by High Court with regard to travel and stay of appellant and child in USA also upheld with certain additions/modifications — CPC, 1908, Ss. 13 and 14. Arathi Bandi* v. *Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475: AIR 2014 SC 918.

Bench Strength **2**. Coram: **S.S. Nijjar** and *P.C. Ghose*, JJ. [Date of decision: 16-7-2013]

4. COMITY OF COURTS

[210] — Doctrine of — Meaning and applicability — *Held, principle of comity of courts does not prohibit/divest jurisdiction of competent court — Courts of one State or jurisdiction will give effect to laws and judicial decisions of another State or jurisdiction, not as a matter of obligation but out of deference and mutual respect*

What is meant by the principle of "comity" is that courts of one State or jurisdiction will give effect to the laws and judicial decisions of another State or jurisdiction, not as a matter of obligation but out of deference and mutual respect. (Para 22)

In the present case no decision of a court of foreign country or no law of a foreign country has been cited on behalf of the appellant to contend that the courts in India out of deference to such decision of the foreign court or foreign law must not assume jurisdiction to restrain arbitration proceedings at Singapore. On the other hand, as has been rightly submitted, under Section 9 CPC, the courts in India have jurisdiction to try all suits of a civil nature

excepting suits of which cognizance is either expressly or impliedly barred. Thus, the appropriate civil court in India has jurisdiction to entertain the suit and pass appropriate orders in the suit by virtue of Section 9 CPC and Clause 9 of the Facilitation Deed providing that the courts in Singapore or any other court having jurisdiction over the parties can be approached for equitable relief could not oust the jurisdiction of the appropriate civil court conferred by Section 9 CPC. In the instant case, the Facilitation Deed in which the arbitration clause is incorporated was executed by the appellant-defendant at Mumbai and the allegation that fraudulent inducement on the part of the appellant-defendant resulting in the respondent-plaintiff entering into the Facilitation Deed took place in Mumbai and the rescission of the Facilitation Deed on the ground that it was induced by fraud of the defendant has also been effected from Mumbai. Thus, the cause of action for filing the suit arose within the jurisdiction of the Bombay High Court and the Bombay High Court had territorial jurisdiction to entertain the suit under Section 20 CPC. However, any civil court in India which entertains a suit, has to follow the mandate of the legislature in Sections 44 and 45 in Chapter I of Part II of the Arbitration and Conciliation Act, 1996 (1996 Act). (Paras 23 and 24). *World Sport Group (Mauritius) Ltd.* v. *MSM Satellite (Singapore) Pte. Ltd.*, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226: AIR 2014 SC 968.

Bench Strength **2**. Coram: **A.K. Patnaik** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 24-1-2014]

Black's Law Dictionary, 5th Edn., relied on

5. COMITY OF NATIONS

— Avoidance of conflicting decisions *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

6. JURISDICTION

[211] — Conflict between laws of two sovereign States — Whose jurisdiction to be preferred — Most intimate contact test — *Following* V. Ravi Chandran (2), *(2010) 1 SCC 174 and* Surinder Kaur Sandhu, *(1984) 3 SCC 698, held, State having the most intimate contact with issues arising in the case will have jurisdiction — Further held, jurisdiction is not attracted/conferred by the operation or creation of fortuitous circumstances — Allowing assumption of jurisdiction by another State in such circumstances will only result in encouraging forum shopping — Attempt by appellant wife to do the same, thwarted — CPC, 1908, Ss. 13 and 14. Arathi Bandi* v. *Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475: AIR 2014 SC 918.

Bench Strength **2**. Coram: **S.S. Nijjar** and *P.C. Ghose*, JJ. [Date of decision: 16-7-2013]

V. Ravi Chandran (2) v. Union of India, (2010) 1 SCC 174: (2010) 1 SCC (Civ) 44, applied

Surinder Kaur Sandhu v. Harbax Singh Sandhu, (1984) 3 SCC 698: 1984 SCC (Cri) 464, followed

H. (Infants), In re, (1966) 1 WLR 381: (1966) 1 All ER 886 (CA), held, approved

Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479: (2011) 3 SCC (Civ) 396: (2011) 2 SCC (Cri) 1033, distinguished

7. PUBLIC POLICY

[212] — Domestic law vis-à-vis matter involving conflict of laws — Distinction in meaning and scope of rule of public policy in

In *Saw Pipes*, (2003) 5 SCC 705, the Supreme Court while accepting the narrow meaning given to the expression "public policy" in *Renusagar*, 1994 Supp (1) SCC 644 in the matters of enforcement of foreign awards, departed from the said meaning for the purposes of the jurisdiction of the Court in setting aside the award under Section 34 of the 1996 Act. Thus, what has been stated by the Supreme Court in *Renusagar case* with reference to Section 7(1)(*b*)(*ii*) of the Foreign Awards Act, 1961 must apply equally to the ambit and scope of Section 48(2)(*b*) of the 1996 Act. In *Renusagar case* it has been expressly exposited that the expression "public policy" in Section 7(1)(*b*)(*ii*) of the Foreign Awards Act refers to the public policy of India. A distinction in the rule of public policy between a matter governed by the domestic law and a matter involving conflict of laws has been noticed in *Renusagar case*. For all this there is no reason why *Renusagar case* should not apply as regards the scope of inquiry under Section 48(2)(*b*) of the 1996 Act. Following *Renusagar case*, for the purposes of Section 48(2)(*b*) of the 1996 Act, the expression "public policy of India" must be given a narrow meaning and the enforcement of foreign awards would be refused on the ground that it is contrary to the public policy of India if it is covered by one of the three categories enumerated in *Renusagar case*. Although the same expression "public policy of India" is used both in Section 34(2)(*b*)(*ii*) and Section 48(2)(*b*) of the 1996 Act and the concept of "public policy in India" is same in nature in both the sections but, its application differs in degree insofar as these two sections are concerned. The application of "public policy of India" doctrine for the purposes of Section 48(2)(*b*) is more limited than

the application of the same expression in respect of the domestic arbitral award. (Paras 26 and 27)

Hence, the submission of the appellant that the expression "public policy of India" in Section 48(2)(*b*) is an expression of wider import than "public policy" in Section 7(1)(*b*)(*ii*) of the Foreign Awards Act, 1961 cannot be accepted. *Renusagar case* must apply for the purposes of Section 48(2)(*b*) of the 1996 Act. Insofar as the proceeding for setting aside an award under Section 34 of the 1996 Act is concerned, the principles laid down in *Saw Pipes case* would govern the scope of such proceedings. Thus, enforcement of foreign awards would be refused under Section 48(2)(*b*) of the 1996 Act only if such enforcement would be contrary to (*1*) the fundamental policy of Indian law; or (*2*) the interests of India; or (*3*) justice or morality. The wider meaning given to the expression "public policy of India" occurring in Section 34(2)(*b*)(*ii*) in *Saw Pipes case* is not applicable where objections are raised to the enforcement of foreign awards under Section 48(2)(*b*). (Paras 28 and 29)

The challenge to the enforceability of the foreign awards passed by the Arbitral Board of Appeal is mainly laid by the appellant sellers on the ground that the Board of Appeal has gone beyond the terms of the contract by ignoring the certificate of quality obtained at the loading port from the buyers' nominated certifying agency i.e. SGS India which was final under the contract. The Board of Appeal, while dealing with the question whether the SGS India certificate was issued by the contractual party and in contractual form, noticed the clause in the contract in respect of quality and condition and it held that SGS India was an acceptable certifying party under the contract. As regards the other part of that clause that provided, "certificate and quality showed in the certificate will be the result of an average of samples taken jointly at the port of loading by the representatives of the sellers and the buyers" the Board of Appeal however found that this contractually specified procedure for sampling was not followed. (Para 42)

Having held that SGS India was the contractual agency, the Board of Appeal further held that the sellers failed to establish that the SGS India certificate was in the contractual form. Two fundamental flaws in the certification by SGS India were noted by the Board of Appeal, one, SGS India's certification did not follow the contractual specified mode of sampling and the other, the analysis done by SGS India was doubtful. The Board of Appeal then sifted the documentary evidence let in by the parties and finally concluded that wheat loaded on the vessel *HACI RESIT KALKAVAN* was soft wheat and the sellers were in breach of the description condition of the contract. (Para 43)

It is pertinent to state that the sellers had challenged the award (No. 3782) passed by the Board of Appeal in the High Court of Justice at London. The three decisions: (*i*) *Agroexport Enterprise d'Etat pour le Commerce Exterieur*, (1956) 1 Lloyd's Rep 319 (QBD) by the Queen's Bench Division, (*ii*) *Alfred C. Toepfer*, (1974) 1 Lloyd's Rep 11 (CA) by the Court of Appeal, and (*iii*) *Gill & Duffus S.A.*, 1984 AC 382 by the House of Lords, were holding the field at the time of consideration of the sellers' appeal by the High Court of Justice at London. The High Court of Justice at London can be assumed to have full knowledge of the legal position exposited in *Agroexport*, *Toepfer* and *Gill & Duffus cases* yet it found no ground or justification for setting aside the award (No. 3782) passed by the Board of Appeal. If a ground purportedly supported by the decisions of that country was not good enough for setting aside the award by the court competent to do so, a fortiori, such ground can hardly be a good ground for refusing enforcement of the foreign award in India. (Para 44). *Shri Lal Mahal Ltd.* v. *Progetto Grano Spa*, (2014) 2 SCC 433: (2014) 2 SCC (Civ) 1: (2013) 4 CTC 636: (2013) 4 LW 542.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 3-7-2013]

Renusagar Power Co. Ltd. v. General Electric Co., 1994 Supp (1) SCC 644, followed and extended

ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705, explained and distinguished

Phulchand Exports Ltd. v. O.O.O. Patriot, (2011) 10 SCC 300: (2012) 1 SCC (Civ) 131, para 16, overruled

CONJUNCTIVE OR DISJUNCTIVE

See ADMINISTRATIVE LAW — 'Subordinate/Delegated Legislation' — Interpretation of Subordinate/Delegated Legislation — Subsidiary rules

See also DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Subsidiary rules

CONSENT/COMPROMISE/CONSENT DECREE

See CIVIL SUIT

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See CONTRACT AND SPECIFIC RELIEF — 'Formation of contract'

CONSOLIDATION

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COORDINATE BENCH/SMALLER BENCH VIS-À-VIS LARGER

See PRECEDENTS

CONSTITUTION OF INDIA

— Preamble, Pt. III and Arts. 14, 21, 15, 44 and 32

See CONSTITUTIONAL INTERPRETATION — 'Aids to Construction' — External Aids — Mores, Beliefs/Faith of People, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

[213] — Preamble and Arts. 14, 19, 21, 25 and 26 — Human rights — Primacy of — Pre-eminence of values enshrined in the Constitution above any religious values or values enshrined in any Personal or Religious Law — *Held, no institution which derives its strength from religion or is religiously sanctioned or sanctioned by religious or personal law, may act or issue directions or opinions (such as fatwa) in violation of basic human rights — Religion cannot be allowed to be merciless to the victim — Faith cannot be used as a dehumanising force*

The question that arose in the present writ petition was: whether Dar-ul-Qazas/Nizam-e-Qazas established by the All India Muslim Personal Law Board to amicably settle disputes of Muslims were parallel courts and fatwas issued by them had any legal status.

Answering in the negative,

Held :

It is well settled, that adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. The decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mughal or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qazas are running a parallel judicial system is misconceived. (Para 13)

The object of establishment of a Muslim court may be laudable but there is no doubt that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the *corpus juris* of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion: it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 "Godfearing Muslims obey the fatwas". In the words of Respondent 10 "it is for the persons/parties who obtain fatwa to abide by it or not". He, however, emphasises that "persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa". *I*'s case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from having a physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached a Dar-ul-Qaza for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it. (Paras 14 and 15)

One may not object to issuance of a fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devas-

tation, a word of caution must be added: Dar-ul-Qaza or for that matter anybody, must not give any response or issue a fatwa concerning an individual, unless asked for by the person involved or the person having a direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected is incapacitated, then any person having some interest in the matter may also seek a fatwa on their behalf. Issuance of fatwa on rights, status and obligation of individual Muslims, is not permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, are absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force. (Para 16)

Therefore, it is observed that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law. (Paras 17 and 18). *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

[214] — Pt. III, Arts. 21, 44, 15 and 14 — Adoption — Right to adopt and right of child to be adopted — Held, not a fundamental right — Elevation of this right to status of fundamental right not possible at present in view of conflicting faith/beliefs of different communities — *View expressed by legislature for the present by enactment of Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) under which adoption can be made by any person irrespective of religion, caste, creed, etc., however, must be given due respect — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 41 r/w S. 2(aa) (as amended in 2006)*

The fundamental rights embodied in Part III of the Constitution constitute the basic human rights which inhere in every person and such other rights which are fundamental to the dignity and well-being of citizens. While it is correct that the dimensions and perspectives of the meaning and content of the fundamental rights are in a process of constant evolution as is bound to happen in a vibrant democracy where the mind is always free, elevation of the right to adopt or to be adopted to the status of a fundamental right, will have to await a dissipation of the conflicting thought processes in this sphere of practices and belief prevailing in the country. The legislature which is better equipped to comprehend the mental preparedness of the entire citizenry to think unitedly on the issue has expressed its view, for the present, by the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the same must receive due respect. Conflicting viewpoints prevailing between different communities, as on date, on the subject makes the vision contemplated by Article 44 of the Constitution i.e. a Uniform Civil Code a goal yet to be fully reached and the Court is reminded of the anxiety expressed by it earlier with regard to the necessity to maintain restraint. All these impel the Court to take the view that the present is not an appropriate time and stage where the right to adopt and the right to be adopted can be raised to the status of a fundamental right and/or to understand such a right to be encompassed by Article 21 of the Constitution. (Para 16). *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1: (2014) 2 SCC (Cri) 225: (2014) 2 SCC (Civ) 417: AIR 2014 SC 1281:

(2014) 4 Mah LJ 933: (2014) 2 KLT 444: (2014) 3 MPLJ 343.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*; JJ. [Date of decision: 19-2-2014]

Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244; Philips Alfred Malvin v. Y.J. Gonsalvis, AIR 1999 Ker 187, distinguished and limited

[215] — Pt. III and Arts. 32 and 44 — Content of fundamental rights — Recognition of a particular entitlement as a fundamental right by Court when not expressly provided for in Constitution — Considerations involved — Conflicting faith/beliefs of different communities — Relevance. *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1: (2014) 2 SCC (Cri) 225: (2014) 2 SCC (Civ) 417: AIR 2014 SC 1281: (2014) 4 Mah LJ 933: (2014) 2 KLT 444: (2014) 3 MPLJ 343.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 19-2-2014]

Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244; Philips Alfred Malvin v. Y.J. Gonsalvis, AIR 1999 Ker 187, distinguished and limited

— Art. 12 *See also* Art. 32

— Art. 12 — "State" under — If includes court *See* 'Article 32' — Scope of Interference under — Against Judicial action, Arts. 32, 136 & 137 and 226 and 12, (2014) 1 SCC 697: (2014) 1 SCC (Civ) 658

[216] — Arts. 13, 32, 129, 136, 226, 144, 245 and 246 — Laws declared illegal/void/ultra vires by Court — Respect and obedience shown by legislative bodies to every such order by Court, highlighted as part of the cornerstone of the rule of law. *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

ARTICLE 14

Synopsis

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(a) Classification Rule

Particular Bases for classification

(i) Other bases for classification

— Art. 14 *See* FAMILY AND PERSONAL LAWS — 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

(ii) Discriminatory and Prohibited bases

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— Art. 14 *See also* Art. 21; Art. 32; Art. 226; Art. 243-Q; Art. 300-A

— Arts. 14, 15 and 44 *See also* FAMILY AND PERSONAL LAWS — 'Muslim Law' — Adoption, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

[217] — Arts. 14, 15 and 44 — Adoption by any person irrespective of religion, caste, creed, etc., held, permissible — Impact of applicable Personal Laws not recognising such adoption — *Held, any person can adopt a child under Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) — Prospective parents have option to employ the provisions of S. 41 of JJ Act, 2000 to adopt a child or they can also choose not to do so and to submit themselves to their applicable Personal Laws — However, Personal Laws cannot dictate the operation of provisions of an enabling statute like JJ Act, 2000 and cannot come in the way of person who chooses to adopt a child under JJ Act, 2000 — Further held, JJ Act, 2000 is a secular law and a small step in reaching the goal of Uniform Civil Code under Art. 44 of Constitution — Juvenile Justice (Care and Protection of Children) Act, 2000 — Chap. IV, S. 41 r/w S. 2(aa) (as amended in 2006) — Juvenile Justice (Care and Protection of Children) Rules, 2007 — Chap. V, R. 33 — Central Adoption Resource Agency (CARA) Guidelines Governing the Adoption of Children, 2011 — Words and Phrases — "Adoption". Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1: (2014) 2 SCC (Cri) 225: (2014) 2 SCC (Civ) 417: AIR 2014 SC 1281: (2014) 4 Mah LJ 933: (2014) 2 KLT 444: (2014) 3 MPLJ 343.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 19-2-2014]

[**Ed.**: The facts are taken from: <http://www.ndtv.com/article/india/when-it-comes-to-adoption-religion-no-bar-supreme-court-485800>, last visited on 10-3-2014.]

[**Ed.**: This judgment has opened the doors for all the communities in India including Muslims, Christians, Parsis, Jews to adopt and also for millions of orphan children who are waiting for a home.

Earlier also, the Madras High Court in R.R. George Christopher, In re, (2010) 2 LW 881, while dealing with application of Christian parents for recognising their adopted female child as natural born child, had accepted the rights of the aspiring parents to adopt under the provisions of the JJ Act, 2000. It would be relevant to mention the following few paragraphs from *R.R. George case*: (LW pp. 886 & 888, paras 13 & 22)

"*13.* The JJ Act for the first time provides 'adoption' as a means to rehabilitate and socially reintegrate a child. It had empowered the State Government and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone.

* * *

22. As can be seen from the Preamble to the JJ Act, the Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Therefore, this Court thought fit to deal with this issue in extenso. Aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisons of the JJ Act."]

— Arts. 14, 25 and 26 — Equal entitlement to freedom of conscience — Fundamental right to — Freedom of conscience and religion — Religious values versus personal choices — Impact of religion on decisions of human beings *See* 'Article 14' — Article 14 and other Articles, Arts. 14, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

(b) Arbitrariness and exercise of Discretionary power

(1) Distribution of State largesse/Govt. contracts

(i) Award of licences/permits/quotas

— Art. 14 *See also* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Allotment/Grant/Lease/Licence of land', (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

[218] — Art. 14 — Allotment of licence — Mode of allotment and consideration payable — Temporal classification — Cut-off date — Allotment of land, grant of quotas, permits, licences, etc. — Norms for — Allotments if valid — *Allotment of iron ore storage plots on licence basis by Board of Paradeep Port Trust to iron ore exporting/trading firms — Limited number of plot holders allotted plots on application basis prior to May 2005 but majority of plot holders allotted plots on basis of auction or by tendering process thereafter — Whether valid — Whether fact that pre-2005 licensees were enjoying licences at much lower licence fees, discriminatory — Held, most of the licences in favour of appellants herein were granted pursuant to a process of either an auction or tender, not inconsistent with principles laid down in* Centre for Public Interest Litigation, *(2012) 3 SCC 1* (2G case) *— Insofar as allotment of plots made on application (prior to 2005), Paradeep Port Trust gave a clear explanation that there was hardly any competition at that point of time for the allotment of plots — Therefore as per the law clarified by the Constitution Bench in* Natural Resources case, *(2012) 10 SCC 1, no fault can be found with such allotments on the ground that the allotments were made without following procedure of auction or tender — Furthermore, appellant's claim of being discriminated against rejected, since licensees who are paying a lower licence fee had secured these licences at a point of time when there was no competition and the market conditions were different — Lastly, party cannot approbate and reprobate — Appellant acquired the licence knowing fully well the terms and conditions subject to which the licence is offered by the Board — They cannot take benefit of the offer and renounce the corresponding obligation (approbate and reprobate)* (Paras 27, 28 and 49 to 52). *Yazdani International (P) Ltd.* v. *Auroglobal Comtrade (P) Ltd.*, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161: (2014) 3 LW 450.

Bench Strength **2**. Coram: *H.L. Gokhale* and **Jasti Chelameswar**, JJ. [Date of decision: 17-12-2013]

Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1; Natural Resources Allocation, In re, (2012) 10 SCC 1, explained and followed

(ii) Government contracts, Principles for

[219] — Arts. 14, 300-A and 299 — Discrimination — Unconscionable contract entered into by State — *State Government entering into contracts with appellant landowners affected by irrigation project to pay them compensation instead of residential plots — However after 2½ yrs higher compensation paid by State Government to other similarly situated landowners who had not entered into agreements with the State — Held, such agreements entered into between appellants and State were unreasonable and unconstitutional apart from being violative of S. 23 of the Contract Act — Contracts being opposed to public policy, void — High Court incorrectly refused to direct the Corporation and other official respondents to pay compensation to appellants on a par with other*

(b)(2) Ultra vires acts/Abuse of power/Misuse of power/public funds *(contd.)*

landowners and committed serious error by dismissing the writ petition — Contract Act, 1872, S. 23 — Maharashtra Project Affected Persons Rehabilitation Act, 1999 (11 of 2001). Daulat Sitaram Kodone v. *State of Maharashtra*, (2014) 13 SCC 341: (2014) 5 SCC (Civ) 718.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 6-8-2013]

Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly, (1986) 3 SCC 156: 1986 SCC (L&S) 429: (1986) 1 ATC 103, followed

Daulat Sitaram Kodane v. State of Maharashtra, WP (C) No. 1835 of 2010, order dated 22-7-2011 (Bom), reversed

(2) Ultra vires acts/Abuse of power/Misuse of power/public funds

— Arts. 14 and 300-A *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 17 and 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

(c) Procedural Equality

(1) Nature and scope

— Arts. 14, 21 and 20(1) — Right to be aware of legal duty alleged to be infringed — Scope *See* 'Article 21' — "Procedure established by law" — Justiciability of "procedure established by law" — Generally, Arts. 21, 14 and 20(1), (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

(2) Natural Justice

(i) Integral part of Art. 14

— Art. 14 *See also* ADMINISTRATIVE LAW — 'Natural Justice' — Audi Alteram Partem — Right to Hearing — Generally — Meaning, Nature, Scope and Applicability, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49

— Arts. 14 and 300-A — Applicability of principles of natural justice — Determination of — If a statutory provision could be read consistently with the principles of natural justice, the courts would prefer do so — That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles — In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 48, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

(ii) Effect of non-compliance with natural justice

— Arts. 14 and 300-A *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

— Ss. 5-A and 17, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

— Ss. 5-A(1) & (2), 4 and 6, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588

— Ss. 17, 4 and 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

— Arts. 14 and 300-A — Legislative history of S. 5-A, LA Act — Right of objection thereunder — Natural justice rule enshrined therein — Object of — Restated — Nature and extent of said right — Depriving a person of his said right — Grounds for — Held, right to object under S. 5-A is a valuable right akin to a fundamental right — The limited right given under S. 5-A is not an empty formality but a substantive right *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A and 17(4), (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

(iii) Audi alteram partem

— Arts. 14 and 300 — Proper or Fair Hearing — Matter heard by one officer — But order passed by his successor without giving a fresh hearing — Effect — Whether principles of natural justice violated in such a case *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 5-A, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

(d) Article 14 and other Articles

— Arts. 14, 15 and 21 *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

[220] — Arts. 14, 25 and 26 — Equal entitlement to freedom of conscience — Fundamental right to — Freedom of conscience and religion — Religious values versus personal choices — *Impact of religion on decisions of human beings — Submission to decision having religious backing — Fatwa/opinion issued by Dar-ul-Qazas or similar institutions established for settlement of disputes of Muslims, though not binding on anyone, but as fatwa gets strength from fact that it is issued by a religiously sanctioned institution, held, it causes serious psychological impact on persons intending not to abide by such fatwa. Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them

any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

— **Art. 15** *See* Art. 14

— **Art. 15(3)** *See* FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

ARTICLE 19

Articles 19(1)(a) & (2) — Freedom of speech and expression

— **Article 19(1)(a) — Nature, Scope and Constituents — Privacy, Right to — Arts. 19(1)(a) and 21** *See* FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **Article 19(1)(a) — Nature, Scope and Constituents — Sexual freedom and expression — Arts. 19(1)(a) & (2), 25 and Preamble** *See* INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS — 'Information Technology Act, 2000', S. 66-A, (2013) 12 SCC 73: (2014) 1 SCC (Civ) 283

— **Article 19(1)(a) — Nature, Scope and Constituents — Sexual freedom and expression — Arts. 19(1)(a) and 21** *See* FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **Art. 20(1)** *See* Art. 21

— **Art. 20(3)** *See* EVIDENCE ACT, 1872, Ss. 32 and 132, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

ARTICLE 21

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See also CONSTITUTION OF INDIA — Art. 21, '(b)(2) "Life" — Meaning and Scope: Narrowly construed', pp. 591 et seq. in **Vol. 6**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

(a) Nature and Scope

Human rights, Doctrine of

— **Art. 21** *See* Art. 32

See also Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— **Arts. 21, 14, 19, 25 and 26** *See* FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

(b) "Life" — Meaning and Scope: Narrowly construed

(1) Generally

— **Art. 21** *See also* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(g), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **Art. 21 — "Life" — Meaning and Scope: Broadly construed — Rights covered — Privacy, Right to** *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', Preamble and Statement of Objects and Reasons and S. 8, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

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— **Art. 21** *See*, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Other situations and issues, Ss. 304-A, 337, 338 and 36, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(c) "Life" — Meaning and Scope: Broadly construed — Rights covered

(1) Privacy, Right to

See also HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', Ss. 8(1)(j) and 11, (2013) 14 SCC 794: (2014) 3 SCC (Civ) 540

— **Art. 21** *See also* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(j), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **Arts. 21 and 19(1)(a)** *See* FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

(2) Marriage, Relationships and Sexual freedom/Sexual orientation freedom

— **Art. 21** *See also* FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

[221] — **Art. 21 — Held, marriage is one of the basic civil rights of man/woman** — *International Covenant on Civil and Political Rights, 1966 (ICCPR), Art. 23(2) — Universal Declaration of Human Rights, 1948, Art. 16(1). Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

(3) Health and Health care, Right to

[222] — **Arts. 21 and 14 — Generally — Right to health — Held, is a fundamental right under Art. 21 and right of patients to be treated with**

dignity, is both their fundamental right as well as human right — Further held, hospitals/nursing homes/clinics are liable to provide treatment to best of their capacity to all patients — Errant/negligent doctors/hospitals/nursing homes are to be dealt with strictly. *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, followed

(d) "Personal liberty"

— Arts. 21, 14 and 19 — Machinery for protection of the right to personal liberty — Arrest and detention to ensure compliance with court order imposing financial liability — Held, permissible *See* PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(e) "Procedure established by law"

Justiciability of "procedure established by law"

(i) Generally

[223] — Arts. 21, 14 and 20(1) — Right to be aware of legal duty alleged to be infringed — Scope — *Held, due process of law requires that everyone who is tried under any law before the court must have some awareness of, or at least a reasonable opportunity to become aware of their legally owed duty towards its recipient — Doctrines and Maxims — Ignorantia juris non excusat — Limits of. P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength **2**. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

(ii) Speedy investigation, trial, disposal of proceedings and execution of sentence, Right to

— Art. 21 — Right to speedy justice *See* CRIMINAL LAW — 'Penal Code, 1860' — Sections 299-304 — Culpable Homicide and Murder — Particular Kinds of Culpable Homicide, Murder and/or other Offences — Criminal negligence/Motor vehicle accident (S. 304-A), S. 304 or Ss. 304-A, 337, 338 and 36, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Arts. 21, 32 and 142 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 143 to 147 and 138, (2014) 5 SCC 590: (2014) 3 SCC (Civ) 233

(iii) Freedom from arbitrary arrest or detention

— Arts. 21, 14 and 19 *See also* PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 21, 14 and 19 — Arrest and detention to ensure compliance with court order imposing financial liability — Held, permissible *See* PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 25 *See* Art. 14

— Arts. 25 and 26 *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— Art. 26 *See also* Art. 14

[224] — Art. 26 — Object and purpose. *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

[225] — Arts. 26 and 136 — Sharing of Nazrana offered by pilgrims visiting Holy Shrine of Hazrat Khawaja Moinuddin Chishti at Ajmer — Dispute between Dewan (judgment-creditor) and Khadims (judgment-debtors) of that Shrine in relation to — *High Court, at the request of Khadims, issuing certain directions for implementing the decree in the matter concerned — Directions (ii), (iii), (iv), (vii) and (viii) of High Court [mentioned in paras 5.2, 5.3, 5.4, 5.7 and 5.8 of the instant judgment respectively] — Objection against, raised by Khadims (petitioners herein) — Tenability of — Main objection that said directions were not workable because, if donations due to Khadims were put in iron boxes, then it would not be possible for Khadims to find out, to which Khadim the pilgrims had given a particular amount as donation for doing special offerings on their behalf — Considering the circumstances of the case, held, at this stage no modification in directions given by High Court would be made — Said directions to be given effect to, pending final adjudication of these cases — Requirement of modifications, if any, could be examined at the time of final adjudication — Status quo order passed earlier by Supreme Court in present case accordingly vacated — Dargah Khwaja Saheb Act, 1955, Ss. 11 and 20 — CPC, 1908, Ss. 47, 51 and Or. 21 R. 10. Syed Gulzar Hussain* v. *Dewan Syed Ale Rasul Ali Khan*, (2014) 11 SCC 465: (2014) 4 SCC (Civ) 142.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 20-2-2014]

Dewan Syed Aley Rasool Ali Khan v. Altaf Hussain, Civil Misc. Appeal No. 4379 of 2012, order dated 13-11-2013 (Raj), affirmed

Syed Gulzar Hussain v. Dewan Syed Ali Rasul Ali Khan, SLP (C) No. 36921 of 2013, order dated 5-12-2013 (SC), vacated

[226] — Art. 26(d) — Religious denomination — Meaning. *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

[227] — Art. 26(d) — Religious denomination — Right to administer property — Scope of regulation permissible — Management of property — Supersession and vesting of right in authority under statute on ground of maladministration — Must be a temporary regulatory measure till evil gets remedied — Perpetual supersession would be violative of Art. 26(d) — *Words and Phrases — "Regulate". Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282; Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388; Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498, followed

[228] — Art. 26(d) — Religious denomination — Right "to administer such property" — Meaning of "such" in context — *Words and Phrases — "Such". Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

— Art. 26(d) and Pt. III — Waiver of fundamental rights — Possibility *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Ss. 44, 45 and 107, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

[229] — Arts. 26(d) and 226 — Religious denomination — Judgment in rem — Res judicata — *Podu Dikshitars (Smarthi Brahmins) constitute a religious denomination and have exclusive privilege and right to participate in administration of properties of Temple concerned dedicated to Lord Natraja — High Court's decision dt. 13-12-1951 to that effect in* Marimuthu Dikshithar, *(1952) 1 MLJ 557, has attained finality — This decision, making declaration of status of Dikshitars, is a judgment in rem — It would operate as res judicata against any subsequent decision on that issue — Hence subsequent re-examination of that issue by the High Court by assuming as if it had jurisdiction to sit in appeal against its earlier decision of 1951 which had attained finality and taking view that earlier decision would not operate as res judicata, impermissible — CPC, 1908, S. 11 — Evidence Act, 1872, S. 41. Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

Marimuthu Dikshithar v. State of Madras, (1952) 1 MLJ 557 sub nom Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt v. Commr., Hindu Religious Endowments Board, approved

Sha Shivraj Gopalji v. Edappakath Ayissa Bi, (1949) 62 LW 770: AIR 1949 PC 302; Mohanlal Goenka v. Benoy Kishna Mukherjee, AIR 1953 SC 65; Raj Lakshmi Dasi v. Banamali Sen, AIR 1953 SC 33; Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941; Daryao v. State of U.P., AIR 1961 SC 1457; Greater Cochin Development Authority v. Leelamma Valson, (2002) 2 SCC 573; Bhanu Kumar Jain v. Archana Kumar, (2005) 1 SCC 787; Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara, AIR 1964 SC 1013; Hope Plantations Ltd. v. Taluk Land Board, Peermade, (1999) 5 SCC 590; Burn & Co. v. Employees, AIR 1957 SC 38; G.K. Dudani v. S.D. Sharma, 1986 Supp SCC 239: 1986 SCC (L&S) 622: (1986) 1 ATC 241; Ashok Kumar Srivastav v. National Insurance Co. Ltd., (1998) 4 SCC 361: 1998 SCC (L&S) 1137; State of Punjab v. Bua Das Kaushal, (1970) 3 SCC 656; Union of India v. Nanak Singh, AIR 1968 SC 1370; Gulabchand Chhotalal Parikh v. State of Gujarat, AIR 1965 SC 1153; Madan Mohan Pathak v. Union of India, (1978) 2 SCC 50: 1978 SCC (L&S) 103, followed

— Art. 31-A(1) second proviso *See* Art. 300-A

ARTICLE 32

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(e)	Exercise of power under by Supreme Court — Relief	100
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(a) Nature and Scope

— Art. 32 *See also* Art. 13; Art. 129; Art. 137; Art. 226

[230] — Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e) — Ex debito justitiae jurisdiction — If and When available — Writ petition under powers of Supreme Court to act *ex debito justitiae* or relying on maxim *actus curiae neminem gravabit* — Maintainability — *Writ petition filed challenging detention order of petitioner passed by Supreme Court on grounds of the same being unjust, without jurisdiction and without any hearing — Both grounds of challenge viz. jurisdictional error and non-compliance with principles of natural justice could not be made out in facts of the case* (see *Shortnotes **I**, **J**, **V**, **X** to **ZE**, **ZH** and **ZJ**, in SCC*) — *Hence, writ petition held, not maintainable —*

Doctrines and Maxims — Actus curiae neminem gravabit — Doctrines and Maxims — Ex debito justitiae (Paras 172 to 176). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1; Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388; Abdul Rehman Antulay v. Union of India, (1988) 2 SCC 764, explained and followed

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278: 2000 SCC (Cri) 193, distinguished

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602: 1988 SCC (Cri) 372, impliedly distinguished

Halsbury's Laws of England, Third Edn., Vol. 9, p. 349, para 820, cited

[231] — Arts. 32, 226, 136, 129, 144 and Arts. 73, 74, 162 and 163 — Breach of fundamental rights and/or other legal rights by State/Instrumentalities of State — Exercise of power of judicial review — *Verdict of Supreme Court/High Courts directing Government concerned or instrumentality/institution concerned to restore to individual what is due to him or effectuate the right concerned — Respect and obedience shown by Governments concerned, highlighted as part of the cornerstone of the rule of law. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Art. 32 r/w Art. 129 *See* Art. 32 r/w Art. 21

(b) Scope of Interference under

(1) Against Judicial action

— Art. 32 — Ex debito justitiae jurisdiction — If and When available — Writ petition under powers of Supreme Court to act *ex debito justitiae* or relying on maxim *actus curiae neminem gravabit* — Maintainability *See* 'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[232] — Art. 32 r/w Arts. 21, 129 and 142 — Writ petition — Maintainability — Writ petition against order passed by Supreme Court in valid exercise of its jurisdiction — Reiterated, not maintainable — *Sahara Companies case — Impugned order of detention of petitioner promoter of Sahara Companies passed by Supreme Court in valid exercise of its jurisdiction under Arts. 129 and 142 (see* Shortnotes ***I, J, ZH and ZJ****) — Plea that criminal writ petition against detention order was maintainable under Art. 32 on account of violation of fundamental rights of petitioner detenu under Art. 21, rejected — Further plea that instant petition was maintainable under Arts. 129 and 142 whereunder Supreme Court has unlimited jurisdiction to correct all mistakes committed by it and to do complete justice, also rejected* (Paras 180 to 183 and 185.10). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1; Col. B. Ramachandra Rao v. State of Orissa, (1972) 3 SCC 256: 1972 SCC (Cri) 481; Jharia v. State of Rajasthan, (1983) 4 SCC 7: 1983 SCC (Cri) 757; Ranjit Singh v. UT of Chandigarh, (1991) 4 SCC 304: 1991 SCC (Cri) 965; Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314: (2013) 1 SCC (Cri) 475, followed

Supreme Court Bar Assn. v. Union of India, (1998) 4 SCC 409; M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278: 2000 SCC (Cri) 193, distinguished

Halsbury's Laws of England, 4th Edn., Vol. 11, para 1454, cited

[233] — Arts. 32, 136 & 137 and 226 and 12 — Power of Supreme Court under Art. 32 to recall or review order/directions passed under Art. 136 (or even under Art. 32) — Availability of similar power to High Court under Art. 226 vis-à-vis exercise of power by High Court on a prior occasion under Art. 226 or otherwise — Breach of fundamental rights, if possible by Court — Court if included within meaning of "State" under Art. 12 — Matter referred to larger Bench — *In* Asit Kumar Kar, *(2009) 2 SCC 703, in a writ petition filed under Art. 32, a two-Judge Bench of the Supreme Court allowed the writ petition against directions passed in an appeal under Art. 136 [in* All Bengal Excise Licensees' Assn., *(2007) 11 SCC 374] treating the writ petition under Art. 32 as a recall petition as the impugned directions in the appellate order under Art. 136 in (2007) 11 SCC 374 were passed without hearing the affected parties and to their prejudice — In* Shaukat Hussain Guru, *(2008) 6 SCC 776, again in a writ petition filed under Art. 32, the writ petitioner had prayed for the setting aside of an order passed in appeal under Art. 136 against which both a review petition and curative petition had been dismissed, on the ground that he had been prejudiced by the non-framing of the charge for which he had been convicted — The two-Judge Bench of the Supreme Court in* Shaukat Hussain Guru case *rejected the writ petitioner's claim not only on merits holding that he had not in any way*

been prejudiced, but also felt constrained in not having the power under Art. 32 to set aside or recall an appellate order passed under Art. 136, especially one which stood confirmed by rejection of both a review and curative petition thereagainst — In Shivdeo Singh, *AIR 1963 SC 1909, a Constitution Bench of the Supreme Court, speaking unanimously held that the High Court had the inherent power under Art. 226 invoked via a fresh writ petition, to review an order passed in a prior writ petition under Art. 226 wherein, in the prior writ petition the High Court had passed an order to the prejudice of the person who had filed the latter fresh writ petition without having heard such person before passing the directions in the prior writ petition. Anjan Kumar Banerjee* v. *State of W.B.*, (2014) 1 SCC 697: (2014) 1 SCC (L&S) 203: (2014) 4 SCC (Cri) 94: (2014) 1 SCC (Civ) 658.

Bench Strength **2**. Coram: *S.B. Sinha* and *Dr M.K. Sharma*, JJ. [Date of decision: 20-2-2009]

[**Ed.**: It is worth setting out the relevant observations from each of the abovementioned three cases:

In Asit Kumar Kar v. *State of W.B.*, (2009) 2 SCC 703 at p. 704, it was held:

"3. ... [In *All Bengal Excise Licensees' Assn.* v. *Raghabendra Singh*, (2007) 11 SCC 374, in para 40 of the judgment passed under Article 136 the Supreme Court] directed cancellation of the licences for the auctions held on 20-3-2005, 21-3-2005 and 22-3-2005 and directed that their businesses shall be stopped forthwith. The aforesaid direction in para 40 of the judgment in *All Bengal Excise Licensees' Assn. case* was passed without hearing the persons whose licences were ordered to be cancelled. In fact even the impleadment applications of such persons were rejected.

4. It is a basic principle of justice that no adverse orders should be passed against a party without hearing him. This is the fundamental principle of natural justice and it is a basic canon of jurisprudence. In the seven-Judge Constitution Bench of this Court in *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602: 1988 SCC (Cri) 372, it has been observed in para 55 thereof: (SCC p. 660)

"55. ... So also the violation of the principles of natural justice renders the act a nullity."

5. One of the counsel relied upon another five-Judge Constitution Bench decision in *Rupa Ashok Hurra* v. *Ashok Hurra*, (2002) 4 SCC 388. It is true that in para 9 of the judgment it has been observed that this Court under Article 32 of the Constitution cannot hold as invalid a judgment of this Court by treating it as a nullity. However, the aforesaid judgment does not say that we cannot pass a recall order when that order has been passed without hearing a party.

6. There is a distinction between a petition under Article 32, a review petition and a recall petition. While in a review petition the Court considers on merits where there is an error apparent on the face of the record, in a recall petition the Court does not go into the merits but simply recalls an order which was passed without giving an opportunity of hearing to an affected party.

7. We are treating this petition under Article 32 as a recall petition because the order passed in the decision in *All Bengal Excise Licensees' Assn. case* cancelling certain licences was passed without giving an opportunity of hearing to the persons who had been granted licences. In these circumstances, we recall the directions in para 40 of the aforesaid judgment...."

In Shaukat Hussain Guru v. *State*, (2008) 6 SCC 776 at p. 789, it was held:

"25. In the facts and circumstances of the case, we do not find any ground to entertain the petition under Article 32 of the Constitution of India. Moreover, for granting the relief prayed for by the petitioner for entertaining the present writ petition it is necessary to set aside the judgment delivered by a Division Bench of this Court confirmed by dismissal of the review petition as also of the curative petition, which cannot be granted as not being permissible in exercise of the powers under Article 32 of the Constitution of India."

In Shivdeo Singh v. *State of Punjab*, AIR 1963 SC 1909, it was held:

"8. The other contention of [the appellants] pertains to the second order [under Art. 226] of Khosla, J., which, in effect, reviews his prior order [under Art. 226]. The learned counsel contends that Article 226 of the Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J. [under Art. 226], affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla, J., entertained the second petition [under Art. 226]. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was entertained by Khosla, J. [under Art. 226]."]

(2) Ex debito justitiae jurisdiction

— Art. 32 — Writ petition under powers of Supreme Court to act *ex debito justitiae* or relying on maxim *actus curiae neminem gravabit* — Maintainability *See* 'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(b)(2) Ex debito justitiae jurisdiction *(contd.)*

— Arts. 32, 13, 139 and 131 to 137 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(c) Maintainability

(1) Abuse of process/court/Fraud on court

— Art. 32 — Conduct of litigant not amenable to rule of law — Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice — Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance *See* RULE OF LAW, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 32 — Duty to consider submissions/contentions/arguments of parties — Scope — Held, it is the onerous duty of courts to deal with submissions/contentions/arguments of parties, however brazen they may be (see also Shortnote B) *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/ Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 32 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 32 — Making of baseless allegations/ insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(2) Frivolous/Vexatious petitions

— Art. 32 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 32 — Making of baseless allegations/ insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(3) Recall/Review

— Arts. 32 and 226 *See* 'Article 32' — Scope of Interference under — Against Judicial action, Arts. 32, 136 & 137 and 226 and 12, (2014) 1 SCC 697: (2014) 1 SCC (Civ) 658

(4) Res judicata

— Arts. 32, 136 and 129 *See* PRACTICE AND PROCEDURE — 'Res judicata', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(d) Procedure to be followed re Art. 32

Recusal by Judge

— Art. 32 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 32 — Refusal to recuse when plea for recusal a ploy to unnecessarily prolong the matter — Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(e) Exercise of power under by Supreme Court — Relief

(1) Nature and Scope

— Art. 32 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Generally, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Judicial independence and courage, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(2) Executive or Legislative action/inaction or gaps — Orders/directions redressing/filling — Judicial legislation

See also CONSTITUTION OF INDIA — Art. 32, '(e)(6)(x) Executive or Legislative action/inaction or gaps — Orders/directions redressing/filling', pp. 579 et seq. in **Vol. 7** of *Complete Digest of Supreme Court Cases*, 2nd Edn.

[234] — Arts. 32 and 21 — Road accidents, deaths and injuries — Multi-dimensional problems — Affirmative State action, legislative and executive, initiated/taken/proposed — Need of constant monitoring and supervision by Supreme Court — Directions issued to: *— (a) all State/UT Governments and Central Government, and (b) Monitoring Committee constituted by present order — Considering limited time available with Supreme Court, Central Government (MoRTH) directed to form a Monitoring Committee (with stated members) to undertake the process of monitoring on behalf of Supreme Court — All Governments directed to undertake/continue 4 dimensional approach (that is, enforcement, engineering, education and emergency care) as initiated and proposed by Central Government — All Governments also directed to report to abovesaid Monitoring Committee within three*

months, the state of implementation and enforcement of all existing laws pertaining to categories indicated [in paras 25 to 36 of present judgment] — Monitoring Committee directed to undertake a detailed scrutiny and examination of said report(s) and views and thereafter within three months report to Supreme Court expressing its views on each matter including deficiencies and defaults on part of any of stakeholders concerned — Matter therefore, adjourned for 6 months awaiting said reports — Motor Vehicles Act, 1988, Ss. 3, 4, 180, 19, 20(2), 132, 134, 185, 189 and 192 (with regard to licensing), Ss. 39, 53, 192, 146, 196, 187, 136 and Ch. V (with regard to vehicular fitness) and Ss. 119, 122, 127, 128, 129, 183, 184, 189, 186, 194 and 192(a) (with regard to use of roads) (Paras 24 to 38). *S. Rajaseekaran* v. *Union of India*, (2014) 6 SCC 36: (2014) 5 SCC (Cri) 270: (2014) 3 SCC (Civ) 36.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *N.V. Ramana*, JJ. [Date of decision: 22-4-2014]

(f) Costs, Award of

— Art. 32 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 39-A *See also* LIMITATION — 'Limitation Act, 1963', S. 5, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425

[235] — Art. 39-A — Scope — Held, Art. 39-A provides for holistic approach in imparting justice to litigating parties — *It not only includes providing free legal aid via appointment of counsel for litigants, but also includes ensuring that justice is not denied to litigating parties due to financial difficulties — Court of Sub-Judge erred in rejecting appellant's case for non-payment of court fee which was principally due to financial constraints faced by appellant* (Para 12). *Manoharan* v. *Sivarajan*, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425: (2014) 1 LW 83: (2014) 5 Mah LJ 3: (2014) 3 MPLJ 495: (2013) 4 KLT 828: (2014) 102 ALR 228: (2014) 133 AIC 58.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 25-11-2013]

— Art. 44 *See* Art. 14

— Arts. 73 & 74 *See* Art. 32

— Arts. 124 and 129 to 145 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 124, 214, 215, 233 and Art. 245 r/w Sch. VII Entry List II 65 & List III Entry 46 *See also* CONSTITUTIONAL LAW — 'Sovereignty/Sovereign functions', (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Arts. 124, 214, 215, 233 and Art. 245 r/w Sch. VII List II Entry 65 & List III Entry 46 — Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Arts. 124(6) & 219 r/w Sch. III Forms IV & VII and Arts. 32, 136, 142, 226 & 129 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 129 *See also* Art. 13; Art. 32; Art. 136; Art. 137

— Arts. 129 and 142 *See also* PRACTICE AND PROCEDURE — 'Amicus Curiae', (2014) 8 SCC 751: (2014) 4 SCC (Civ) 634

See also RULE OF LAW, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[236] — Arts. 129, 142, 32 and 136 — Compromise before Supreme Court — Stage of compromise — Stage at which compromise not permissible — *Held, when merits of claims of rival parties are already settled by adjudication by court and even contempt by party by way of breach of court's order is admitted, there is no question of any compromise — Compromise is permissible while merits of rival claims are still pending — Sahara Companies case — Claims of rival parties already settled by Supreme Court in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, via order dt. 31-8-2012 — In present writ petition challenging detention order of petitioner promoter of Sahara Companies which was passed on account of failure of companies to comply with Supreme Court's directions, held, there is no question of any compromise — CPC, 1908, Or. 23 R. 3* (Para 130). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Arts. 129, 142, 32 and 136 — Contempt proceedings — Notice of to contemnor petitioner *See* NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 129, 142 and 141 — Contempt of Supreme Court *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase', (2014) 5 SCC 429: (2014) 3 SCC (Civ) 190

— Arts. 129, 142 and 144 *See also* CIVIL PROCEDURE CODE, 1908, S. 51, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[237] — Arts. 129, 142 and 144 — Contempt jurisdiction of Supreme Court — Scope — Orders/directions of Supreme Court — Compliance with — Effect of non-compliance — Powers

of Supreme Court to compel compliance, including by ordering detention to ensure compliance — Plenary nature of — Obeying/complying with/implementing orders of Supreme Court is mandatory — *Held, there is no escape from acceptance, obedience or compliance with orders passed by Supreme Court, which is the final and highest court of India — Non-compliance/disobedience of orders of Supreme Court would dislodge the cornerstone maintaining equilibrium and equanimity in India's governance — There would be a breakdown of constitutional functioning — Hence, Supreme Court has unlimited power, in fact sacred obligation to compel obedience and observance of its orders, and may thus direct detention of contemnor to ensure compliance. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

K.A. Ansari v. Indian Airlines Ltd., (2009) 2 SCC 164: (2009) 1 SCC (Civ) 424: (2009) 1 SCC (L&S) 363; Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273: (2012) 1 SCC (Civ) 88: (2012) 1 SCC (Cri) 528: (2012) 1 SCC (L&S) 83; Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, followed

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (orders dated 4-3-2014), affirmed

Halsbury's Laws of England, Third Edn., Vol. 9, p. 349, para 820, cited

[238] — Arts. 129, 142 and 144 — Power/jurisdiction of Supreme Court to punish for its contempt — Scope — What orders can be passed while exercising such power/jurisdiction — Order of detention to ensure compliance — *Held, power of Supreme Court to punish for contempt includes power to persuade, and if necessary, compel obedience and observance of judicial orders — Hence, order of detention of contemnor to enforce compliance with Supreme Court's directions can be passed by Supreme Court in legitimate exercise of its contempt jurisdiction under Art. 129 — On facts, impugned order of detention of petitioner promoter contemnor of Sahara Companies to enforce compliance with Supreme Court's directions passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012 and* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, dt. 5-12-2012, held, does not suffer from any jurisdictional error — Contempt of Courts Act, 1971, Ss. 12 and 2(b). Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

K.A. Ansari v. Indian Airlines Ltd., (2009) 2 SCC 164: (2009) 1 SCC (Civ) 424: (2009) 1 SCC (L&S) 363; Maninderjit Singh Bitta v. Union of India, (2012) 1 SCC 273: (2012) 1 SCC (Civ) 88: (2012) 1 SCC (Cri) 528: (2012) 1 SCC (L&S) 83; Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1, followed

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (orders dated 4-3-2014), affirmed

Halsbury's Laws of England, Third Edn., Vol. 9, p. 349, para 820, cited

[239] — Arts. 131 and 144 — Verdict of Supreme Court on disputes between States or between Union and States — Respect and obedience shown by Governments concerned, highlighted as part of the cornerstone of the rule of law. *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

ARTICLE 136

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(a) Scope of Interference under Art. 136

(1) General principles for grant of special leave

[240] — Art. 136 — Substantial question of law of general public importance — Not mere/technical error of law or where two views possible — Case raising no substantial question of law — *Suit instituted for performance of an agreement to sell contested by defendant after filing a written statement — During recording of evidence, defendants absented themselves — Suit proceeded with ex parte and decreed — Application for setting aside ex parte decree disallowed by trial court and appellate court — Concurring with decisions rendered by courts below, held, both courts found no reason to set aside same — Cogent reasons having been stated for holding so, no reason to entertain SLP since no question of law arises for consideration — CPC, 1908, Or. 9 R. 13 and S. 100 — Constitution of India, Art. 136. Gurcharan Singh* v. *Surjit Singh*, (2014) 2 SCC 140: (2014) 1 SCC (Civ) 664.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 22-11-2013]

(2) State's responsibility when seeking determination under Art. 136

— **Art. 136** *See* CIVIL PROCEDURE CODE, 1908, Ss. 100 and 102, (2014) 3 SCC 156: (2014) 2 SCC (Civ) 265

(3) Accident claims/Man-made disasters/Mass tort actions

— **Art. 136** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

(4) Arbitration matters

— **Art. 136** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 7 and 11, (2013) 14 SCC 354: (2014) 2 SCC (Civ) 668

(5) Civil/Private disputes

— **Art. 136** *See* 'Article 136' — Scope of Interference under Art. 136 — General principles for grant of special leave, Art. 136, (2014) 2 SCC 140: (2014) 1 SCC (Civ) 664

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(6) Consumer matters

— **Art. 136** *See also* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **Art. 136 — Services — Housing** *See* CONSUMER PROTECTION — 'Services' — Housing, (2012) 13 SCC 694: (2014) 5 SCC (Civ) 409

(7) Discretionary power, Exercise of by lower forum

— **Art. 136** *See* CIVIL PROCEDURE CODE, 1908, Or. 21 R. 89, (2014) 1 SCC 584: (2014) 1 SCC (Civ) 493

(8) Family and matrimonial disputes

— **Arts. 136 and 142** *See also* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— **Arts. 136 and 142 — Decree of divorce by mutual consent — Matter finally settled by Supreme Court** *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13-B, (2014) 13 SCC 381: (2014) 5 SCC (Civ) 723

— **Arts. 136 and 142 — Maintenance — Granted by Supreme Court to minor son after affirming decree of divorce when High Court failed to address that aspect** *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 25, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

(9) Interim/Interlocutory orders

— **Art. 136** *See also* INTELLECTUAL PROPERTY — 'Copyright Act, 1957', S. 31(1)(b), (2011) 15 SCC 425: (2014) 2 SCC (Civ) 608

— **Art. 136 — Interference in family and matrimonial disputes** *See* FAMILY AND PERSONAL LAWS — 'Matrimonia Discords/Disputes/Offences/ Proceedings', (2013) 10 SCC 714: (2014) 1 SCC (Civ) 118

[241] — Art. 136 — Interim arrangement/order under pending appointment of arbitrator and adjudication of rights of parties — Dispute as to exclusive Broadcast/telecast rights and creation of third-party rights — Pending final adjudication

(a)(9) Interim/Interlocutory orders *(contd.)*

by way of arbitration, SLP disposed of with interim arrangements — *All considerations in lieu of telecast rights directed to be deposited in an escrow account — Unawarded telecast rights directed to be awarded following standard tender procedures — Appellant (BCCI) appointed as deemed Receiver till final adjudication — Arbitration and Conciliation Act, 1996, S. 9* (Paras 6 to 11). *Board of Control for Cricket in India* v. *World Sports Group (India) (P) Ltd.*, (2011) 15 SCC 428: (2014) 2 SCC (Civ) 611.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 21-4-2011]

[242] — Art. 136 — Interim orders — Temporary injunction — Concurrent findings — Interference — General rule of no interference — *As first appellate court and High Court had dismissed application for temporary injunction on ground that no essential ingredients for grant thereof were made out, Supreme Court declined to interfere — CPC, 1908, Or. 39 Rr. 1, 2 and Or. 43 R. 1(r)* (Para 6). *Ram Chander* v. *Nagar Nigam*, (2014) 1 SCC 199: (2014) 1 SCC (Civ) 62.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Swatanter Kumar*, JJ. [Date of decision: 9-6-2011]

Ramchandra v. Nagar Nigam, Special Application Writ No. 1289 of 2006, order dated 27-5-2011 (Raj), affirmed

— Art. 136 — Scope of interference under Art. 136 — Questions of fact — Perverse finding of High Court — Set aside *See* CIVIL PROCEDURE CODE, 1908, S. 96 and Or. 41 R. 31, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— Arts. 136 and 14 — Interference in interim/interlocutory orders/injunction/stay — Arbitrary action by State instrumentality *See* CIVIL PROCEDURE CODE, 1908, Or. 43 R. 1(r) and Or. 39 Rr. 1 & 2, (2014) 1 SCC 693: (2014) 1 SCC (Civ) 655

(10) Intellectual Property matters

— Art. 136 *See* INTELLECTUAL PROPERTY — 'Copyright Act, 1957', S. 31(1)(b), (2011) 15 SCC 425: (2014) 2 SCC (Civ) 608

(b) Maintainability of SLP

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(1) Questions of Fact

[243] — Art. 136 — Concurrent findings of fact — General rule of no interference — While dealing with ceiling issue, tenure holder submitted to authority that he and his wife (appellant) were divorced — *Authority concluding that there was no divorce — Same finding was confirmed by appellate authority — Declining to interfere, Supreme Court held, conclusions reached by authorities concerned were based on evidence and records — Hence, such findings did not require interference* (Para 4). *Khatoon Nisa* v. *State of U.P.*, (2014) 12 SCC 646: (2014) 5 SCC (Cri) 170: (2014) 5 SCC (Civ) 155.

Bench Strength **5**. Coram: *G.B. Pattanaik, M.B. Shah, Doraiswamy Raju, S.N. Variava* and *D.M. Dharmadhikari*, JJ. [Date of decision: 14-8-2002]

[244] — Art. 136 — Interference with concurrent findings of fact — Contested decree based on concurrent findings of fact recorded by courts below — *Held, cannot be interfered with unless said findings were proved to be perverse — CPC, 1908, Ss. 33 & 96 and Or. 20. State of Karnataka* v. *K.C. Subramanya*, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725: (2014) 102 ALR 248: (2014) 133 AIC 183: (2014) 1 LW 103.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and *P.C. Ghose*, JJ. [Date of decision: 16-9-2013]

State of Karnataka v. K.C. Subramanya, Regular First Appeal No. 1765 of 2005, decided on 26-7-2011 (KAR), affirmed

— Art. 136 — Interference with concurrent findings of fact — When warranted *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73

[245] — Art. 136 — Jurisdictional issue, requiring an inquiry into terms and conditions of lease deed — Matter, therefore, remanded to determine the same

Disposing of the appeal,

Held :

Despite the fact that the Small Cause Court as also the High Court may be correct in arriving at the findings that on the face of the averments made in the plaint, the Small Cause Court had the jurisdiction to entertain the plaint, but ultimately a finding of fact as to whether the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would be applicable or not must be determined in terms of the conditions of the lease dated 1-11-2004 as also on the basis of other admissible evidence which may be adduced by the parties. The lease deed has not been filed in the present appeal. Therefore, the matter must be considered afresh by the Judge of Small Cause Court. (Paras 8 to 11)

One of the questions which indisputably would arise for consideration of the Small Cause Court would be as to whether having regard to the nature and character of the demise made in favour of the appellant by the respondent herein, the same would constitute transfer of the premises together with the machineries installed therein or it was principally a demise of the machinery and incidentally the premises had also been transferred. (Para 5). *B.P. Extractions* v. *Shankar Lal Gulab Chand & Co.*, (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759.

Bench Strength 2. Coram: *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-1-2006]

[246] — Art. 136 — Reappreciation of evidence — When warranted — Rejection of evidence of CWs 3 and 5 — Propriety — *Tribunal rejecting evidence of CW 3 on ground that said witness had stated contrary to case of claimants that deceased was riding pillion, and further rejecting testimony of CW 5 on ground that in circumstances narrated by him, said witness could not have possibly seen actual mishap — Held, Supreme Court while hearing appeal with special leave would not normally reappreciate evidence led before the trial court — Supreme Court refraining from re-appreciating evidence in instant case too, but observing that rejection of evidence of CWs 3 and 5 on the grounds assigned was improper — Motor Vehicles Act, 1988, Ss. 166, 168 and 173* (Paras 11 and 5)

The appellant claimants were the wife and daughters of one *N* who died in a motor vehicle accident that had occurred on 29-6-1997. The deceased was driving a scooter and one *R* was riding pillion. It was alleged that one pick-up van driven by R-1 came from the opposite direction; though the deceased tried to avoid the pick-up van which was being driven in a rash and negligent manner, the rear mudguard of the pick-up van hit the scooter as a result of which the deceased and the pillion rider fell off and suffered injuries resulting in death of deceased. The Tribunal framed four issues for trial in the case. Though under Issue 3 the Tribunal assessed the compensation payable to the claimants at Rs 6,66,041.78, in view of the findings recorded against Issues 1 and 4 (whether the deceased or R-1 was negligent and responsible for the accident), the Tribunal came to the conclusion that the appellants claimants are not entitled to any compensation. The High Court having affirmed the findings and the conclusion of the Tribunal, the present appeal was filed. The Supreme Court, held as above. *Dulcina Fernandes* v. *Joaquim Xavier Cruz*, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73: AIR 2014 SC 58: (2014) 2 Mah LJ 510: (2014) 2 MPLJ 679.

Bench Strength 2. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi**, J. [Date of decision: 8-10-2013]

(2) Frivolous/Infructuous/Futile appeal/academic issue/question

— Art. 136 *See* CONSUMER PROTECTION — 'Services' — Housing, (2012) 13 SCC 694: (2014) 5 SCC (Civ) 409

See also PRACTICE AND PROCEDURE — 'Infructuous/Frivolous Appeal/Petition/Academic Issue/Question', (2013) 14 SCC 685: (2014) 5 SCC (Civ) 240

— Art. 136 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Unauthorised construction — Frivolous appeal — Dismissed — Imposition of costs, affirmed *See* 'Article 226' — Maintainability of writ petition — Frivolous writ petition, Arts. 226 and 136, (2011) 15 SCC 387: (2014) 2 SCC (Civ) 497

(3) Abuse of process of court/law/fraud on court

— Art. 136 — Conduct of litigant not amenable to rule of law — Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice — Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance *See* RULE OF LAW, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Duty to consider submissions/contentions/arguments of parties — Scope — Held, it is the onerous duty of courts to deal with submissions/contentions/arguments of parties, however brazen they may be (*see also* Shortnote *B*) *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(4) Subsequent events

— Arts. 136 and 142 *See* CIVIL PROCEDURE CODE, 1908, Ss. 96 & 100 and Or. 41 R. 33, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

(5) Abatement of appeal/SLP against dead person

[247] — Art. 136 — Abatement — Appeal to Supreme Court — Death of the appellant landowners — Failure to file applications for substitution by legal heirs or land developer within period of limitation — *LRs aware of the pendency of the appeal filed by the landowners and developer aware of death of the landowner from whom it had acquired development rights and a power of attorney — Considerable delay (5-8 yrs) in filing applications for substitution — No satisfactory explanation — Held, appeals had abated — CPC, 1908, Or. 22 Rr. 4 and 9* (Paras 13 to 15). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

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(1) Generally

— Art. 136 *See also* 'Article 136' — Exercise of power under by Supreme Court — Relief — Approach: Considerations involved therein, Arts. 136 and 142, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— Arts. 136 and 142 *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

(2) Pleadings and Particulars

[248] — Art. 136 — Grounds stated in memorandum of appeal — If not established by evidence, cannot be considered. *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

(3) Pleas not allowed/not considered by courts below/not raised before all courts below

— Art. 136 *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

(4) New plea

See also CONSTITUTION OF INDIA, Art. 136 — '(e)(4) New plea', pp. 714 et seq. in **Vol. 8**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

[249] — Art. 136 — New plea — Admitted facts — *Arguments based on admitted facts on record, can be examined by Supreme Court on merits even though same were neither raised in High Court nor in special leave petition — On facts, argument of waiver thus examined by Supreme Court* (Paras 20 and 21). *Vasu P. Shetty* v. *Hotel Vandana Palace*, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304: AIR 2014 SC 1947: (2014) 144 AIC187: (2014) 186 Comp Cas 82: (2014) 3 CTC 193: (2014) 107 ALR 714: (2014) 4 LW 770.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 22-4-2014]

[250] — Art. 136 — Plea that State Consumer Commission did not have jurisdiction to try case, raised before Supreme Court for the first time — *Held, raising question of fact for the first time before Supreme Court is impermissible — In grounds urged it was not even pleaded that question of jurisdiction was raised before High Court and it was not considered* (Para 1). *Supt., Foreign Post Office* v. *Indo Lhasa Curious*, (2011) 15 SCC 511: (2014) 2 SCC (Civ) 130: (2011) 3 CPJ 19.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Swatanter Kumar*, JJ. [Date of decision: 7-6-2011]

[251] — Art. 136 — Question of fact — New plea before Supreme Court, as to — Impermissibility of, reiterated (Para 7). *Escorts Ltd.* v. *Rama Mukherjee*, (2014) 2 SCC 255: (2014) 1 SCC (Cri) 808: (2014) 1 SCC (Civ) 789: (2014) 3 Mah LJ 284: (2014) 2 MPLJ 301: (2013) 132 AIC 156.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 17-9-2013]

[252] — Arts. 136 and 142 — Raising new grounds/plea before Supreme Court for the first time — Permissibility — Public interest served thereby — Not considering grounds would lead to futile result — New grounds for termination of licences examined by Supreme Court to render complete justice — Opportunity given to appellants to file submissions on proposed termination of their licences on new grounds set up by respondent Board — Preliminary objection

as to, rejected — *Held, jurisdiction under Art. 136 is not exercised where it is likely to be a futile exercise i.e. where the relief might be of no use to the applicant because it would still be open to the competent authority to achieve the result sought to be achieved by the disputed action — As respondent Board/licensor can always terminate/revoke the licences, hence, rejecting the new plea of the Board or any ground for revoking licences of appellants would only lead to protracted litigation and delay in execution of the project by the Board which would not subserve public interest — Supreme Court shall not contribute to such delay on the ground of some perceived procedural irregularity (which was remedied before Supreme Court), particularly when the appellants have no substantive right — Appellants were given a wholesome opportunity to establish their legal right before the Supreme Court, to prevent the Board from terminating their licences, which they failed to do. Yazdani International (P) Ltd.* v. *Auroglobal Comtrade (P) Ltd.*, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161: (2014) 3 LW 450.

Bench Strength **2**. Coram: *H.L. Gokhale* and **Jasti Chelameswar**, JJ. [Date of decision: 17-12-2013]

de Smith's Judicial Review of Administrative Action, 4th Edn., p. 561; Seervai, H.M.: Constitutional Law of India [Bombay: N.M. Tripathi (P) Ltd., 3rd Edn., Vol. 2 (1984), para 16.279, p. 1367], relied on

[253] — Art. 136 — Raising of new plea during arguments — Permissibility — Disputed questions of fact involving examination, not raised at any stage below, rising for first time before Supreme Court — *Held, not permitted — Difference in prevailing exchange rate of dollar when loss occurred and when claim made neither raised in written statement nor in appeal nor in special leave petition, but raised only at the time of arguments — Held, said plea cannot be permitted to be raised during arguments* (Paras 38 and 39). *Shaw Wallace & Co. Ltd.* v. *Nepal Food Corporation*, (2011) 15 SCC 56: (2014) 2 SCC (Civ) 225: AIR 2012 SC 72.

Bench Strength **2**. Coram: **R.V. Raveendran** and *H.L. Gokhale*, JJ. [Date of decision: 13-10-2011]

(5) Recusal by Judge

— Art. 136 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Refusal to recuse when plea for recusal a ploy to unnecessarily prolong the matter — Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(d) Exercise of power under by Supreme Court — Relief

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(1) Broadly

— Art. 136 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Generally, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Judicial independence and courage, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 136, 141 and 42 *See* 'Article 141' — What is binding — "Law declared by Supreme Court" — Directions issued under Art. 142, Arts. 141, 136 and 142, (2014) 8 SCC 883: (2014) 4 SCC (Civ) 657

[254] — Arts. 136, 141 and 142 — Directions issued by Court — Held, are normally (i) as declarations of law, and (ii) in the nature of moulding of relief. *State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883: (2014) 3 SCC (L&S) 134: (2014) 6 SCC (Cri) 154: (2014) 4 SCC (Civ) 657.

Bench Strength **3**. Coram: *H.L. Dattu, R.K. Agrawal* and *Arun Mishra*, JJ. [Date of decision: 8-7-2014]

Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2004 SCC (Cri) Supp 445; Union of India v. Karnail Singh, (1995) 2 SCC 728; Indian Bank v. ABS Marine Products (P) Ltd., (2006) 5 SCC 72; Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381: 2006 SCC (L&S) 1986; State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667: 2006 SCC (L&S) 190, affirmed

(2) Approach: Considerations involved therein

— Arts. 136 and 142 *See also* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

[255] — Arts. 136 and 142 — Relief — Appeal — Minor technical fetters can be ignored to do complete justice in exercise of power under Art. 142 — *Relief, not expressly prayed for in relief*

(d)(3) Moulding of relief *(contd.)*

clause but perceptible from material on record and also statutorily permissible — Held, Supreme Court has power and duty under Art. 142 to consider question of grant of such relief on basis of undisputed material on record — CPC, 1908, Or. 7 R. 7 and Or. 41 R. 24 — Relief not claimed in prayer clause, but clearly discernible from materials on record — Constitution of India, Art. 136. Malathi Ravi v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

(3) Moulding of relief

— Arts. 136 and 142 — Subsequent events *See* CIVIL PROCEDURE CODE, 1908, Ss. 96 & 100 and Or. 41 R. 33, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

(4) Delay incurred in proceedings/Time-bound expeditious disposal

[256] — Art. 136 — Relief — Expeditious disposal — Since matter concerned public dues, expeditious disposal, directed (Para 3). *State of U.P.* v. *Daljit Singh*, (2011) 15 SCC 487: (2014) 2 SCC (Civ) 623.

Bench Strength **2**. Coram: *G.S. Singhvi* and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2011]

(5) Executive or Legislative actions/Inaction or gaps — Judicial legislation

— Art. 136 — Direction for issuance of notification *See* (2013) 16 SCC 719: (2014) 5 SCC (Civ) 612

(6) Expunction of adverse remarks

— Art. 136 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Judges vis-à-vis Judges, (2013) 12 SCC 392: (2014) 1 SCC (Civ) 476

— Art. 136 — Expunction of adverse remarks — When warranted *See* PRACTICE AND PROCEDURE — 'Adverse/Disparaging Remarks/Observations/Strictures', (2012) 13 SCC 700: (2014) 5 SCC (Civ) 414

(7) Final disposal by Supreme Court

— Art. 136 — When warranted *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19(25), 20, 21 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

(8) Remand

— Art. 136 *See* PRACTICE AND PROCEDURE — 'Remand', (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550

(9) Schemes framed/detailed directions issued by Court/Directions to ensure compliance

[257] — Arts. 136, 129, 141 and 144 — While deciding *Priya Gupta*, (2012) 7 SCC 433 certain directions issued — Nature and object of the directions — Clarified — Need for strict adherence therewith — Emphasised

While deciding *Priya Gupta*, (2012) 7 SCC 433, it was noticed by the Supreme Court that the contemnors admitted less meritorious students over students of higher merit by ignoring the directions issued by the Supreme Court. Taking note of the irregularities committed by various officials, it was observed by the Supreme Court that they were not performing their duties as per law declared by the Supreme Court and that the officials had tampered with the schedule specified under the regulations and judgment of the Supreme Court. Accordingly, notice for contempt was served on all contemnors.

The Director of Medical Education admitting his mistakes tendered unconditional apology at the earliest instance. Further, it was also urged on his behalf that the directions given in *Priya Gupta*, (2012) 7 SCC 433 were of general nature and hence non-compliance of those directions would not amount to contempt. The Dean and Members, Selection Committee tendered their apology and also contended that they acted with under directions of their superiors with bona fide intentions. The Additional Secretary, Ministry of Health and Family Welfare, Union of India and the Director General, Directorate of Health Service. Union of India took the plea that they were not directly responsible for violation of directions of the Supreme Court.

Disposing of the contempt petitions in the terms below,

Held :

The directions which have been issued in the cases referred to in *Priya Gupta case* clearly provide for admission to medical courses in order of merit, for the process of admission to be transparent and fair, and that there must be strict adherence to the time schedule specified in the judgments. The purpose of this was to ensure that arbitrariness and discrimination did not creep into this process, and equal opportunity was ensured to the eligible candidates applying to the medical courses in a just and fair manner. (Para 20)

These directions were intended to serve a greater public purpose and were expected to be within the knowledge of all persons concerned besides the fact that the law declared by the

Supreme Court is deemed to be known to all concerned. The violation of general directions issued by the Supreme Court would attract the rigours of the provisions of the Contempt of Courts Act, 1971. Whether for such violation or non-compliance, the Court would punish a person or persons, would always depend upon the facts and circumstances of a given case. It is not possible to provide any straightjacket formula that is universally applicable to all cases. All that the courts have to examine is whether the apology tendered was bona fide, when examined in the light of the attendant circumstances and that it would be in the interest of justice to accept the same. (Para 21)

Contempt proceedings were intended to ensure compliance with the orders of the court and adherence to the rule of law. The directions were binding and must be obeyed by the parties and all concerned stricto sensu. In fact, the directions of the present kind were to be placed at a higher pedestal as compared to cases where the matter is inter se between two parties to the lis as they were intended to attain a greater purpose and ensure adherence to the rule of law in a particular process which otherwise would be arbitrary and violative of the constitutional mandate. (Para 26). *Priya Gupta* v. *Ministry of Health & Family Welfare*, (2013) 11 SCC 404: (2014) 1 SCC (Civ) 534: 2013 Cri LJ 732: (2013) 116 Cut LT 91.

Bench Strength **2**. Coram: *A.K. Patnaik* and **Swatanter Kumar**, JJ. [Date of decision: 13-12-2012]

(e) Costs

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 136 — Abuse of Process of Court/Law/Fraud on Court — Penal/Exemplary costs *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 48(1), 4 and 6, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— Art. 137 *See* Art. 32

[258] — Art. 137 — Review — Maintainability — Delay/Laches — Review sought of *Eastern Book Company* v. *D.B. Modak*, (2008) 1 SCC 1 with delay of 2162 days — Held, no satisfactory explanation given in the application for condonation of delay — *Thus, review petition liable to be dismissed on the ground of delay itself and so dismissed as such — Copyright Act, 1957, Ss. 55, 13 and 2(o). D.B. Modak* v. *Eastern Book Company*, (2014) 7 SCC 662: (2014) 2 SCC (L&S) 526: (2014) 3 SCC (Cri) 448: (2014) 3 SCC (Civ) 797.

Bench Strength **2**. Coram: *R.M. Lodha* and *H.L. Dattu*, JJ. [Date of decision: 25-2-2014]

Eastern Book Company v. *D.B. Modak, (2008) 1 SCC 1, review petition dismissed*

— Arts. 137 and 32 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[259] — Arts. 137, 129, 136 and 32 — Order passed by Supreme Court — Legitimacy or otherwise of order — Supreme Court cannot be called upon to explain legitimacy of procedure adopted by Court while passing any order — *Held, it is not for a court to tender any explanation to any litigant or his counsel — Hence, it should never be considered obligatory on the part of any court to tender any such explanation — If a party feels that a serious mistake has been committed, party can seek review of the order under Art. 137 or file a curative petition after its rejection — Impugned order dt. 4-3-2014 of detention of petitioner for non-compliance with orders passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012 and* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, dt. 5-12-2012 — In writ petition impugning the detention order, petitioner or his counsel cannot require Supreme Court to explain to them legitimacy of the procedure adopted. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

ARTICLE 141

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(a) Doctrine of stare decisis — Binding effect of law declared by Supreme Court

(1) Forums binding on

(i) Supreme Court whether itself bound

1. Inter-bench conflicts

1.1 Larger bench vis-à-vis smaller bench

— Art. 141 *See also* Art. 136; Art. 142

[260] — Art. 141 — Binding effect of rulings of coordinate/Larger Benches of Supreme Court — A coordinate Bench is bound to follow the previously published view — It is certainly competent to add to the precedent to make it logically and dialectically compelling — However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied — *Where a coordinate Bench finds itself unable to agree with an existing ratio, it is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench — It is imperative for the Court to diligently distil and then apply the ratio of a decision; and the view of a larger Bench ought not to be disregarded — Thus, when three-Judge Bench in* Ishar Alloy Steels, *(2001) 3 SCC 609 had clarified the law on territorial jurisdiction of court where complaint under S. 138, NI Act could be filed, it was no longer open to follow rulings of two-Judge Bench in* K. Bhaskaran, *(1999) 7 SCC 510, which stood overruled to that extent*

A coordinate Bench is bound to follow the previously published view; it is certainly competent to add to the precedent to make it logically and dialectically compelling. However, once a decision of a larger Bench has been delivered it is that decision which mandatorily has to be applied; whereas a coordinate Bench, in the event that it finds itself unable to agree with an existing ratio, is competent to recommend the precedent for reconsideration by referring the case to the Chief Justice for constitution of a larger Bench. Indubitably, there are a number of decisions by two-Judge Benches on Section 138 of the NI Act, the majority of which apply *K. Bhaskaran*, (1999) 7 SCC 510 without noting or distinguishing on facts the three-Judge Bench decision in *Ishar Alloy case*. It is imperative for the Court to diligently distil and then apply the ratio of a decision; and the view of a larger Bench ought not to be disregarded. Inasmuch as the three-Judge Bench in *Ishar Alloy case* has categorically stated that for criminal liability to be attracted under Section 138 of the NI Act, the subject cheque has to be presented to the bank on which it is drawn within the prescribed period, *K. Bhaskaran case* has been overruled. (Para 6)

It is axiomatic that when a court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations. *Ishar Alloy case* is the only case on the issue at hand which was decided by a three-Judge Bench and, therefore, was binding on all smaller Benches. It is the drawee Bank and not the complainant's bank which is postulated in the so-called second constituent of Section 138 of the NI Act. The offence in the contemplation of Section 138 of the NI Act is the dishonour of the cheque alone, and it is the satisfaction of the five ingredients of that section that enable the prosecution of the offence in contradistinction to the completion/commission of the offence. (Paras 10 and 11). *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength **3**. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[261] — Art. 141 — Coordinate benches — Supreme Court vis-à-vis itself — Doubt about the correctness of the judgment in *Swaran Singh*, (1996) 5 SCC 501 repelled (Para 18). *State of Haryana* v. *Kartar Singh*, (2013) 11 SCC 375: (2014) 1 SCC (Civ) 527: (2013) 96 ALR 701: (2013) 122 AIC 232: (2013) 1 LW 675.

Bench Strength **2**. Coram: **R.M. Lodha** and *Anil R. Dave*, JJ. [Date of decision: 29-11-2012]

Union of India v. Swaran Singh, (1996) 5 SCC 501, reaffirmed

1.2 Coordinate benches

— **Art. 141** *See also* 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court whether itself bound — Inter-bench conflicts, Art. 141, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

1.3 Reference to larger bench — When warranted

— **Art. 141** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 142 and 138, (2014) 11 SCC 809: (2014) 4 SCC (Civ) 362

See also LIMITATION — 'Limitation Act, 1963', Art. 61, (2014) 9 SCC 211: (2014) 4 SCC (Civ) 776

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 123 and 122, (2014) 9 SCC 456: (2014) 5 SCC (Civ) 72

— **Art. 141 — Reference to larger Bench** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 163-A and 140, (2014) 1 SCC 680: (2014) 1 SCC (Civ) 642

— Ss. 173, 170, 149(2) and 163-A, (2014) 1 SCC 680: (2014) 1 SCC (Civ) 642

[262] — Art. 141 — Reference to larger Bench — Sahara Companies case — Keeping in view the importance of issues involved, ramifications that the directions issued by present two-Judge Bench of Supreme Court may have, and also the fact that one very important order which is sought to be enforced in present proceedings was passed by three-Judge Bench of Supreme Court, proceedings referred to three-Judge Bench to be set up by Chief Justice (Para 26.5). *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 8 SCC 751: (2014) 3 SCC (L&S) 105: (2014) 6 SCC (Cri) 101: (2014) 4 SCC (Civ) 634: (2014) 141 AIC 264.

Bench Strength **2**. Coram: **T.S. Thakur** and *Dr A.K. Sikri*, JJ. [Date of decision: 4-6-2014]

— **Art. 141 — Reference to larger Bench — When warranted** *See* RENT CONTROL AND EVICTION — 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', S. 15(6), (2014) 9 SCC 102: (2014) 4 SCC (Civ) 747

[263] — Arts. 141, 142 and 136 — Reference to larger Bench — When unwarranted — *Directions passed in peculiar facts and circumstances of the case to do complete justice under Art. 142 not being a declaration of law, any apparent conflict with a true declaration of law by Supreme Court, held, does not warrant reference to a larger Bench. State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883: (2014) 3 SCC (L&S) 134: (2014) 6 SCC (Cri) 154: (2014) 4 SCC (Civ) 657.

Bench Strength **3**. Coram: *H.L. Dattu, R.K. Agrawal* and *Arun Mishra*, JJ. [Date of decision: 8-7-2014]

Shyam Babu Verma v. Union of India, (1994) 2 SCC 521: 1994 SCC (L&S) 683: (1994) 27 ATC 121; Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18: 1995 SCC (L&S) 248; Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450, clarified and harmonised

Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450, affirmed

(ii) Other forums that are bound

1. Principles to be followed by while applying decisions of Supreme Court

— **Arts. 141 and 142** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

2. High Courts

[264] — Art. 141 — Impact on order which had followed overruled decision of High Court — *Impugned order based on judgment in similar matter in* Indira Devi case, *(2005) 3 All WC 2879 which was set aside in* Indira Devi case, *Civil Appeal No. 2161 of 2007 decided on 21-10-2009 (SC) [reported at (2011) 15 SCC 488] — Therefore, matter remanded to High Court for decision a fresh on basis of judgment Supreme Court in said* Indira Devi case (Paras 1 to 3). *State of U.P.* v. *Daljit Singh*, (2011) 15 SCC 487: (2014) 2 SCC (Civ) 623.

Bench Strength **2**. Coram: *G.S. Singhvi* and *A.K. Ganguly*, JJ. [Date of decision: 11-2-2011]

Indira Devi v. State of U.P., (2005) 3 All WC 2879, held, overruled

[265] — Arts. 141 and 144 — High Court following Full Bench decision of High Court which had been overruled by Supreme Court — Impermissibility

The respondent filed a suit for specific performance of an agreement of sale for possession over the land which was decreed. The decree was put to execution. When the warrant for delivery of possession was sought to be executed, the appellant offered resistance claiming to be in possession of the suit property and not bound by the decree. He preferred a petition under Order 21 Rules 35 and 97 CPC before the executing court. The objection was dismissed as not maintainable. The appellant preferred a revision to the High Court which too was dismissed. The appellant was before the Supreme Court thereagainst by special leave.

Allowing the appeal,

Held :

A third person claiming to be in possession of the property forming subject-matter of decree in his own right can resist delivery of possession even by filing an objection under Order 21 Rule 97 CPC in the executing court itself and if that is done, the objection shall have to be determined by the executing court itself. The provisions of Rule 100 of the old CPC, the equivalent provision whereof is Rule

(a)(2) Temporal operation of "law declared" by Supreme Court — Prospective declaration of law/overruling by Supreme Court *(contd.)*

99 in the new CPC will not defeat the right of such person to get his objection decided under Rule 97 which is a stage prior to his dispossession. The appellant has already filed a suit for permanent injunction wherein a temporary injunction has been obtained by the plaintiff protecting his possession. The objections of the appellant should have been heard and decided by the executing court itself. The objection filed by the objector (appellant) shall now be heard and decided in accordance with Order 21 Rule 97 read with Rule 101 CPC. A separate suit is not maintainable. (Paras 5 and 6). *Har Vilas* v. *Mahendra Nath*, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490.

Bench Strength **2**. Coram: *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision: 11-9-2003]

Shreenath v. Rajesh, (1998) 4 SCC 543; Anwarbi v. Pramod D.A. Joshi, (2000) 10 SCC 405, followed

Usha Jain v. Manmohan Bajaj, AIR 1980 MP 146: 1980 MPLJ 429 (FB), held, overruled

(2) Temporal operation of "law declared" by Supreme Court — Prospective declaration of law/overruling by Supreme Court

— Art. 141 — Prospective overruling — Consequences of — Action under law prior to date from which it stood prospectively overruled, held, cannot be questioned on ground of law made prospective by applicable *See* LOCAL GOVERNMENT — 'Municipalities' — Punjab Municipal Act, 1911 (3 of 1911), S. 192(1)(c), (2014) 7 SCC 269: (2014) 3 SCC (Civ) 693

(b) What is binding — "Law declared by Supreme Court"

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(1) Generally

[266] — Arts. 141 and 136 — Declaration of law — Held, is the speech, express or necessarily implied by Supreme Court — *Words and Phrases — "Declaration of law"*

Although the words employed under the two Articles 136 and 142 of the Constitution of India speak of the powers of the Supreme Court, the former vest a plenary jurisdiction in the Supreme Court in the matter of entertaining and hearing of appeals by granting special leave against any judgment or order made by a court or tribunal in any cause or matter. The powers are plenary to the extent that they are paramount to the limitations under the specific provisions for appeal contained in the Constitution or other laws. Article 142 of the Constitution of India, on the other hand is a step ahead of the powers envisaged under Article 136 of the Constitution of India. It is the exercise of jurisdiction to pass such enforceable decree or order as is necessary for doing "complete justice" in any cause or matter. (Para 8)

Article 136 of the Constitution of India confers a wide discretionary power on the Supreme Court to interfere in suitable cases. Article 136 of the Constitution of India was legislatively intended to be exercised by the Highest Court of the land, with scrupulous adherence to the settled judicial principle well established by precedents in our jurisprudence. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clearly and makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution. (Paras 10 and 11)

Article 142 of the Constitution of India is supplementary in nature and cannot supplant the substantive provisions, though they are not limited by the substantive provisions in the statute. It is a power that gives preference to equity over law. It is a justice-oriented approach as against the strict rigours of the law. The directions issued by the Court can normally be categorised into one, in the nature of moulding of relief and the other, as the declaration of law. "Declaration of law" as contemplated in Article 141 of the Constitution: is the speech express or necessarily implied by the Highest Court of the land. The directions issued under Article 142 do not constitute a binding precedent unlike Article 141 of the Constitution of India. They are directions issued to do proper justice and exercise of such power, cannot be considered as law laid down by the Supreme Court under Article 141 of the Constitution of India. The Court has compartmentalised and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. The Supreme Court

on the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and by declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case. (Para 12). *State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883: (2014) 3 SCC (L&S) 134: (2014) 6 SCC (Cri) 154: (2014) 4 SCC (Civ) 657.

Bench Strength **3**. Coram: *H.L. Dattu, R.K. Agrawal* and *Arun Mishra*, JJ. [Date of decision: 8-7-2014]

Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2004 SCC (Cri) Supp 445; Union of India v. Karnail Singh, (1995) 2 SCC 728; Indian Bank v. ABS Marine Products (P) Ltd., (2006) 5 SCC 72; Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381: 2006 SCC (L&S) 1986; State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667: 2006 SCC (L&S) 190, affirmed

— Arts. 141, 136 and 142 *See* 'Article 136' — Exercise of power under by Supreme Court — Relief — Broadly, Arts. 136, 141 and 142, (2014) 8 SCC 883: (2014) 4 SCC (Civ) 657

See also 'Article 141' — What is binding — "Law declared by Supreme Court" — Directions issued under Art. 142, Arts. 141, 136 and 142, (2014) 8 SCC 883: (2014) 4 SCC (Civ) 657

(2) Interpretation of judgments

— Art. 141 *See also* PRECEDENTS — 'Interpretation of Judgments', (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

[267] — Art. 141 — Interpretation of judgments — Reiterated — To be read as a whole. *Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406, clarified and followed

Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1; Sundarjas Kanyalal Bhatija v. Collector, (1989) 3 SCC 396, distinguished on facts

— Art. 141 — Precedents — Interpretation of judgments — Mode of *See* RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

(3) Precedent — Only ratio decidendi binding

— Art. 141 *See* PRECEDENTS — 'Ratio Decidendi', (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

(4) Principles for determining ratio decidendi of a decision

— Art. 141 *See* PRECEDENTS — 'Ratio Decidendi', (2013) 15 SCC 414: (2014) 5 SCC (Civ) 302

(5) Directions issued under Art. 142

[268] — Arts. 141, 136 and 142 — Directions issued to do complete justice in a particular case in the peculiar facts and circumstances thereof under Art. 142 and Law laid down by Supreme Court under Art. 136 — Difference between — Precedential value of — *Held, decision under Art. 136 declares law having binding effect under Art. 141, while directions issued under Art. 142 in any cause or matter in the peculiar facts and circumstances thereof cannot be considered as law laid down by Supreme Court — Art. 136 is a corrective jurisdiction that vests discretion in Supreme Court to settle the law and makes the law operational — However, power conferred on Supreme Court under Art. 142, though wide and not limited by substantive provisions in any statute, is supplementary in nature and cannot supplant substantive provisions of law — Said power is justice-oriented that gives preference to equity to do "complete justice" in any cause or matter as against strict rigours of the law in a particular case in the peculiar facts and circumstances thereof — Being directions issued by relaxing application of law or exempting a case from rigour of the law in view of its peculiar facts and circumstances, direction under Art. 142 cannot be considered as law laid down by Supreme Court under Art. 141 and does not constitute binding precedent — Hence, decisions of Supreme Court under Art. 142 cannot be weighed on a par with decisions under Art. 136. State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883: (2014) 3 SCC (L&S) 134: (2014) 6 SCC (Cri) 154: (2014) 4 SCC (Civ) 657.

Bench Strength **3**. Coram: *H.L. Dattu, R.K. Agrawal* and *Arun Mishra*, JJ. [Date of decision: 8-7-2014]

Shyam Babu Verma v. Union of India, (1994) 2 SCC 521: 1994 SCC (L&S) 683: (1994) 27 ATC 121; Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18: 1995 SCC (L&S) 248; Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450, clarified and harmonised

Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450; Ramakant Rai v. Madan Rai, (2003) 12 SCC 395: 2004 SCC (Cri) Supp 445; Union of India v. Karnail Singh, (1995) 2 SCC 728; Indian Bank v. ABS Marine Products (P) Ltd., (2006) 5 SCC 72; Ram Pravesh Singh v. State of Bihar, (2006) 8 SCC 381: 2006 SCC (L&S) 1986; State of U.P. v. Neeraj Awasthi, (2006) 1 SCC 667: 2006 SCC (L&S) 190, affirmed

(6) Per incuriam decisions

See also CONSTITUTION OF INDIA, Art. 141 — '(h)(7) Per incuriam decisions', pp. 1001 et seq. in **Vol. 8**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

[269] — Art. 141 — Per incuriam decisions — *Held, decisions in* Satnam Singh, *(2011) 14 SCC 758,* Mubasir Ahmed, *(2007) 2 SCC 349 and* Mohd. Nasir, *(2009) 6 SCC 280, held, are per incuriam since they were rendered in ignorance of larger Bench decisions in* Pratap Narain Singh Deo,

(b)(7) Dissenting view/Minority opinion *(contd.)*

(1976) 1 SCC 289 and Valsala K., *(1999) 8 SCC 254* (Para 8). *Saberabibi Yakubbhai Shaikh* v. *National Insurance Co. Ltd.*, (2014) 2 SCC 298: (2014) 1 SCC (Cri) 817: (2014) 2 SCC (Civ) 77: AIR 2014 SC 1393: (2014) 3 Mah LJ 252: (2014) 2 MPLJ 318: (2014) 117 Cut LT 943: (2014) 1 Cal LJ 100: (2014) 3 Guj LR 1932.

Bench Strength **2**. Coram: *S.S. Nijjar* and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 2-1-2014]

Oriental Insurance Co. Ltd. v. Siby George, (2012) 12 SCC 540: (2012) 4 SCC (Cri) 136: (2013) 2 SCC (Civ) 392; Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289: 1976 SCC (L&S) 52; Kerala SEB v. Valsala K., (1999) 8 SCC 254: 2000 SCC (L&S) 50, applied

National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349: (2007) 1 SCC (L&S) 643; Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280: (2009) 2 SCC (Civ) 877: (2009) 2 SCC (Cri) 987; U.P. SRTC v. Satnam Singh, (2011) 14 SCC 758: (2012) 4 SCC (Civ) 1032: (2013) 2 SCC (L&S) 641, held, per incuriam

National Insurance Co. Ltd. v. Yusuf Ibrahim Shaikh, First Appeal No. 197 of 2012, decided on 24-1-2012 (Guj), reversed

(7) Dissenting view/Minority opinion

[270] — Art. 141 — Dissenting view — Reliance upon, by High Court, held improper — Hence decision of High Court set aside. *State of U.P.* v. *Indira Devi*, (2011) 15 SCC 488: (2014) 2 SCC (Civ) 624.

Bench Strength **2**. Coram: *G.S. Singhvi* and *Dr B.S. Chauhan*, JJ. [Date of decision: 21-10-2009]

State of Maharashtra v. Deokar's Distillery, (2003) 5 SCC 669, explained

Indira Devi v. State of U.P., (2005) 60 ALR 58, reversed

— Art. 142 *See* Art. 32; Art. 129; Art. 136; Art. 141; Art. 300-A

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13-B r/w Art. 142 of Constitution, (2013) 15 SCC 547: (2014) 5 SCC (Civ) 364

— S. 13-B(2), (2011) 15 SCC 612: (2014) 2 SCC (Civ) 737

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 168 and 171, (2014) 3 SCC 210: (2014) 2 SCC (Civ) 289

[271] — Art. 142 — Power of Supreme Court to do complete justice in any cause or matter — Exercise of — Execution of an order passed by Consumer Forum — *Appellant filed a complaint against respondent before State Consumer Commission and his complaint was allowed — Order of State Commission attained finality as it was not appealed against — For execution of order of State Commission, petition filed before civil court at Bangalore — Subsequently civil court dismissed execution petition for want of jurisdiction as registered office of respondent was in Mumbai — Propriety of — Held, as State Commission's order attained finality it had to be executed — Hypertechnicalities should not come in way of executing the order — Supreme Court expressed displeasure on raising of all kinds of objections just to linger on the matter as much as possible and to avoid execution and such delaying tactics would subvert operation of judicial orders — Consumer Protection Act, 1986, Ss. 12 and 25(a) (as it was prior to amendment) — CPC, 1908, Or. 21 R. 30* (Paras 7 and 8). *H.K.K. Bail* v. *Cyma Exports (P) Ltd.*, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370.

Bench Strength **2**. Coram: *Markandey Katju* and *Gyan Sudha Misra*, JJ. [Date of decision: 19-1-2011]

— Arts. 142 and 129 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 142 and 129 — Execution of appellate order passed by Supreme Court — Proper mode of *See* SECURITIES, MARKETS AND EXCHANGES — 'Securities and Exchange Board of India Act, 1992', S. 15-Z, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[272] — Arts. 142, 136 and 141 — Equity — When may prevail over the law — Compensation for motor accident victims — *On facts, appellants, even during their retired life will have to take care of their son like a child especially when they would have expected their son to take care of them — Held, at times it is not possible to award compensation strictly in accordance with the law laid down, as in a particular case it may not be just — It is a reality of life that at times the life of an injured or sick person becomes more miserable for the person and for the family members than death — Though High Court rightly followed principle laid down in* Sarla Verma, *(2009) 6 SCC 121, amount of compensation awarded by Tribunal is more just — Tribunal awarded a lump sum of Rs 10 lakhs and amount of expenditure incurred by appellants for treating their son totalling Rs 18,75,800 which, is not too much and should be awarded to appellants — Motor Vehicles Act, 1988, Ss. 166 and 168* (Paras 10 to 13). *R. Venkata Ramana* v. *United India Insurance Co. Ltd.*, (2013) 10 SCC 673: (2014) 2 SCC (L&S) 717: (2014) 1 SCC (Cri) 374: (2014) 1 SCC (Civ) 86: (2013) 132 AIC 90: (2014) 1 MPLJ 507: (2014) 2 Mah LJ 454: (2013) 101 ALR 727.

Bench Strength **2**. Coram: **Anil R. Dave** and *Dipak Misra*, JJ. [Date of decision: 17-9-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed but compensation awarded by Tribunal affirmed

— Art. 144 *See* Art. 13; Art. 32; Art. 129; Art. 131; Art. 136; Art. 141

— Arts. 144, 32, 139 and 131 to 137 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Abuse of process, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 145(1)(e) *See* Art. 32

— Arts. 162 & 163 *See* Art. 32

ARTICLE 226

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— Art. 226 *See* Art. 13; Art. 26(d); Art. 32; Art. 300-A

(a) Nature and scope of Art. 226

— Art. 226 — Equity jurisdiction — Non-exercise of — When warranted *See* HUMAN AND CIVIL RIGHTS — 'Displaced Persons and Refugees' — Evacuee Interest (Separation) Rules, 1951, R. 11-B(2)(ii), (2013) 14 SCC 590: (2014) 2 SCC (Civ) 801

(b) Scope of Judicial review/Interference under Art. 226

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(1) Arbitration matters

— Art. 226 *See also* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 5, (2014) 7 SCC 255: (2014) 3 SCC (Civ) 688

— Art. 226 — Termination of mandate of Arbitral Tribunal — Validity of — Proper forum to determine — Invocation of Art. 226 of Constitution against order passed by Arbitral Tribunal — Not maintainable — Legality of termination of mandate of Arbitral Tribunal, held, is to be decided by court under provisions of 1996 Act, and not under Art. 226 of Constitution by way of writ proceedings *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 14(2), 5, 2(1)(e) and 32(2)(c), (2014) 7 SCC 255: (2014) 3 SCC (Civ) 688

(2) Civil/Private disputes

— Art. 226 — A writ petition, held, cannot be dismissed on the ground of non-exhaustion of an alternative remedy of a civil court, merely because the matter involves questions of fact — The court has to examine whether the dispute involves a public law element *See* 'Article 226' — Maintainability of writ petition — Alternative remedy/Exhaustion of remedies, Art. 226, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493

[273] — Arts. 226 and 227 — Interference in civil/ private disputes — When permissible in writ jurisdiction — Principles reiterated — Maintainability of writ petition in landlord-tenant dispute — Scope of High Court's jurisdiction to quash plaint or suit proceedings and to interfere with injunction order passed by trial court — Disputes relating to landlord-tenant with allegations of one party harassing the other, held, not entertainable under Arts. 226 and 227 of Constitution — *In a suit filed by purchaser of a shop premises order passed by trial court injuncting defendant seller of shop from conducting any prohibited business in shop either directly or through someone else — By virtue of court's order Municipal Corporation issued notice directing defendant to close business in shop — Petition under Arts. 227 and 226 filed by tenant of shop, who was not a party to suit proceedings, alleging that suit was filed by purchaser of shop in collusion with defendant landlord with intention to harass him and praying to call for records and quash plaint — Held, question whether order was procured with intention to harass petitioner tenant is one of fact and in absence of any issue or evidence in that regard, writ petition cannot be entertained — Transfer of Property Act, 1882, Ss. 109 and 108(c)*

The father of Respondent 2 (*A*) leased the shop in question to the father of Respondent 1. After death of father of Respondent 1, the appellant, his brothers and mother continued as tenants of the shop. After death of *A*, his property was devolved upon his children. Respondent 1 filed a suit for injunction restraining the children of *A* from forcefully evicting them from the property. The suit was

(b)(3) Contractual matters (including government contracts and auctions) *(contd.)*

decreed. According to the appellant, the shop was purchased by him from the children of *A*. He filed a suit against Respondent 1, his brothers and mother claiming absolute title over the property. He gave an undertaking before the court that he would not forcefully dispossess Respondent 1 from the property. But according to Respondent 1, as the appellant continued to harass him, he filed a writ petition before the High Court seeking police protection, which was allowed. Respondent 1 submitted that thereupon with an intention to evict him, the appellant by colluding with Respondent 2 filed a suit before the Munsif Court. By an interim order the Munsif Court injuncted Respondent 2 from conducting any prohibited business in the shop room either directly or through someone else. By virtue of that order, Respondent 3, the Municipal Corporation issued a notice to Respondent 2 directing him to close the business in the shop room. Respondent 1 thereafter, moved the High Court by filing an original petition praying inter alia to call for the original records of the suit pending before the Munsif Court and to quash the plaint filed by the appellant in the suit. The appellant filed a counter-affidavit before the High Court and submitted that the writ petition under Articles 226 and 227 of the Constitution was not maintainable to quash the plaint or the suit proceedings and/or the injunction order passed by the trial court. Per contra, Respondent 1 submitted that it was open to the High Court to issue such writ on being satisfied that the order obtained by the appellant was by deceitful means in order to harm Respondent 1. Respondent 1 pleaded as follows: the appellant has fraudulently filed the suit to harass him and to ensure that the business run in the shop is closed down. The said suit was filed by the appellant after having failed in all illegal attempts to evict Respondent 1 from the shop room which was in his possession as a tenant for a very long time. The appellant deliberately and fraudulently omitted to have impleaded Respondent 1 as a defendant to the suit in order to obtain an order from the Court so that it could be misused to cause Municipal Corporation to pass an order to close down the shop. Accepting the plea taken by Respondent 1, the High Court set aside the plaint and further proceedings initiated on the basis of the plaint in the suit, quashed the order passed by the Munsif Court and imposed costs of Rs 25,000 on the appellant for payment in favour of the respondent writ petitioner.

The only question which was required to be determined in this case was: whether the High Court while exercising its power under Articles 226 and 227 of the Constitution is competent to set aside the plaint in a civil/private dispute?

Allowing the appeal,

Held :

A petition under Article 226 or Article 227 of the Constitution can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of Respondent 1 tenant that the order passed by the trial court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution can be exercised to question a plaint. (Para 15)

The question whether the one or other order procured by the appellant purchaser of the shop against Respondent 2 landlord was with the intention to harass Respondent 1 tenant is a question of fact which can be determined on the basis of evidence. There is no such issue framed nor any evidence brought on record to suggest the orders obtained by the appellant against Respondent 2 with intention to misuse the same and harass Respondent 1. If Respondent 1 was aggrieved against the orders which were passed by the courts in one or the other suit against a third party (Respondent 2) and to which Respondent 1 was not a party, he was not remediless and could have challenged the same before an appropriate forum. (Para 14). *Jacky* v. *Tiny*, (2014) 6 SCC 508: (2014) 3 SCC (Civ) 601: AIR 2014 SC 1615: (2014) 2 KLT 303: (2014) 117 Cut LT 1108: (2014) 105 ALR 273: (2014) 138 AIC 84: (2014) 4 LW 646.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *S.A. Bobde*, JJ. [Date of decision: 9-4-2014]

Tiny v. Jacky, OP (Civil) No. 1792 of 2011, decided on 27-10-2011 (Ker), reversed

(3) Contractual matters (including government contracts and auctions)

[274] — Art. 226 — Allotment of house by Housing Board — Condition of levy of interest on defaulted/delayed instalments — Cancellation of allotment on default of amounts due — Directions for allotment in favour of respondent on payment of amounts due after waiver of interest,

by High Court — Legality — *Held, allotment of house is governed by terms contained in the letter of allotment — Clear provisions existed in the allotment letter for charging interest on instalments and additional interest on defaulted dues — High Court should not, in exercise of power of judicial review, interfere in such pure matters of contract — Appellant entitled to charge interest in terms of the contract — High Court could not have ordered waiver of interest, hence, its directions modified — Appellant directed to execute sale deed in favour of first respondent if he pays interest and other dues. Avas Evam Vikas Parishad* v. *Laxmi Nath Misra*, (2011) 15 SCC 517: (2014) 2 SCC (Civ) 631: (2011) 2 CPJ 23.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 3-1-2011]

Laxmi Nath Mishra v. State of U.P., WP No. 3491 (M/B) of 2006 order dated 4-11-2008 (All), reversed

(4) Debt Financial and Monetary Laws

— Art. 226 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(3-A), 13(2) and 17, (2014) 5 SCC 762: (2014) 3 SCC (Civ) 336

— Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 18 and 20, (2013) 10 SCC 652

— Arts. 226 and 227 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 14, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Ss. 17(1), 13 and 14, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also RENT CONTROL AND EVICTION — 'Maharashtra Rent Control Act, 1999 (18 of 2000)', S. 33, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Arts. 226 and 227 — There is no remedy available to lessee of borrower under S. 17 of 2002 Act before DRT, in case of dispossession by secured creditor or CMM/DM — Remedy of such lessee against decision of CMM/DM under S. 14 of 2002 Act handing over possession to secured creditor lies under Arts. 226 and 227 of Constitution *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

(5) Land acquisition/Eminent domain matters

— Art. 226 *See also* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4, 6 and 17, (2014) 13 SCC 734: (2014) 5 SCC (Civ) 789

— Arts. 226, 136 and 300-A *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 17 and 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

(6) Public Interest Litigation

(i) Broadly

[275] — Arts. 226, 32 and 136 — Public interest litigation (PIL) — Technicalities should not come in the way of the Court in granting relief in a PIL, but this depends upon the facts and circumstances of each case (Paras 42 and 43). *Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 17-4-2014]

[276] — Arts. 226, 136 and 32 — Public interest litigation (PIL) — Nature, Object and Scope — Approach of court to be followed in PIL — PIL, when should be entertained — Principles reiterated — *Reiterated, when interests can be protected and controversy/dispute can be adjudicated by a mechanism created under a particular statute, parties should be relegated to the appropriate forum instead of entertaining the writ petition filed as PIL. Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 17-4-2014]

(ii) Maintainability

— Arts. 226 and 136 — Public interest litigation (PIL) — Maintainability — Alternative remedy/ Exhaustion of remedies — Questions of fact *See* TRUSTS AND TRUSTEES — 'Rajasthan Public Trusts Act, 1959 (42 of 1959)', S. 24 (w.e.f. 1-7-1962), (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199

(iii) Particular instances

[277] — Arts. 226, 136 and 32 — Public interest litigation (PIL) — Maintainability — Management of public trusts and religious institutions governed by provisions of specific statute — Scope and ambit of PIL in respect of, is very limited — *Held, if public trusts and religious institutions are governed by particular legislation which provides for a proper mechanism for adjudication of disputes relating to properties of trust and management thereof, it would not be proper for the court to entertain PILs and pass orders — Rajasthan Public Trusts Act, 1959 (42 of 1959). Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 17-4-2014]

(7) Public Law/Constitutional Torts/Accidents

— **Arts. 226 and 32** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(8) Revisional matters

— **Art. 226** *See* TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

(9) Tenancy and land matters

— **Art. 226** *See* 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

See also TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— 'Karnataka Land Reforms Act, 1961 (10 of 1962)', S. 48-A, (2014) 13 SCC 688: (2014) 5 SCC (Civ) 771

[278] — Arts. 226, 136, 14 and 300-A — Interference in land acquisition matters — Acquisition ignoring policy framed by State Government not to acquire fertile land and in the face of availability of large tract of government land — Division Bench of High Court dismissing writ petitions without considering the grounds on which appellants had challenged the acquisition — Unsustainability — *Held, following* Radhy Shyam case, *(2011) 5 SCC 553, impugned orders passed without considering the core questions, set aside and remitted to High Court for fresh adjudication to be finally disposed of by date fixed — State and other official respondents shall, within four weeks file affidavits in the High Court incorporating therein all the facts which have bearing on the acquisition of the land in question along with relevant documents — Interim orders of Supreme Court to remain operative till disposal of the writ petitions by High Court — Land Acquisition Act, 1894, Ss. 4(1), 6 and 11* (Paras 6 to 9). *Ramlal Motiramji Tayade* v. *Land Acquisition Officer*, (2013) 11 SCC 500: (2014) 1 SCC (Civ) 594.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 27-4-2012]

Radhy Shyam v. State of U.P., (2011) 5 SCC 553: (2011) 3 SCC (Civ) 1, followed

Sushilabai v. Land Acquisition Officer, WP No. 1736 of 2011, order dated 30-6-2011 (Bom); Ramlal M. Tayade v. Land Acquisition Officer, WP No. 2256 of 2011, order dated 29-7-2011 (Bom), reversed

— **Arts. 226 and 300-A** *See also* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A and 54, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588

[279] — Arts. 226, 300-A and 14 — Maintainability of writ petition — Delay/Laches — Entertainment of petition despite delay/laches — Circumstances envisaged, reiterated through case law — *Held, though underlying policy behind dismissal of petitions on grounds of delay/laches is to discourage agitation of stale claims, but delay in approaching court must not always act in prejudice to the aggrieved party and court must prudently exercise its discretion in doing so — In the instant case, appellants had assigned cogent reasons for delay in approaching writ court amidst successive reports of LAO making variable recommendations in terms of grant of exemption from acquisition of appellants' land — Appellants had approached writ court soon after final decision was taken by respondent authorities in this regard — High Court erred in dismissing petition on grounds of delay/laches — Besides, there was violation of principles of natural justice during acquisition proceedings — Hence, delay ipso facto cannot result in dismissal of writ petition — Land Acquisition Act, 1894, Ss. 4 and 6* (Paras 8 to 11). *Lajja Ram* v. *UT, Chandigarh*, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40.

Bench Strength **2**. Coram: *H.L. Dattu* and *Dipak Misra*, JJ. [Date of decision: 27-2-2013]

(c) Maintainability of writ petition

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(1) Alternative remedy/Exhaustion of remedies

See also CONSTITUTION OF INDIA, Art. 226 — '(e)(3) Alternative remedy/Exhaustion of remedies', pp. 656 et seq. in **Vol. 9**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

— **Art. 226** *See also* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(3-A), 13(2) and 17, (2014) 5 SCC 762: (2014) 3 SCC (Civ) 336

[280] — Art. 226 — Complex economic decisions taken by State or its instrumentalities — Fixation of price of gas — Availability of effective alternative dispute resolution remedy like arbitration — Interference by High Court under Art. 226 — Propriety — *Gas sale agreement (GSA) for supply of regasified liquefied natural gas (RLNG) up to 31-4-2028 — Long-term GSA for supply of RLNG up to April 2028 at a uni-*

form pooled price in terms of policy decision of Government of India signed by about 150 existing buyers except respondent which insisted on signing agreement on mutually agreed terms effective till 31-12-2013 — Appellant offered determination of price of gas w.e.f. 1-1-2014 through market mechanism which was declined by respondent — Since respondent was not open to any other pricing mechanism, appellant deciding to terminate GSA — High Court in writ petition thereagainst holding that action of appellant was arbitrary and not fair since benefit of policy decision taken by Government of India was not extended to respondent and directed appellant to engage with respondent to arrive at price of gas to be effective from 1-1-2014 — Sustainability — On facts, held, at the insistence of respondent only, price side agreement was signed effective till 31-12-2013 on condition that price of gas for the period 1-4-2014 to 1-1-2019 would be reviewed before expiry of term on 31-12-2013 lest GSA would be terminated — Hence, held, High Court erred in arriving at finding of arbitrariness in proposal of appellant for determination of price — Further, Para 15.5 of GSA provided for resolving disputes arising out of GSA by arbitration — Since an effective alternative dispute resolution remedy like arbitration was available, High Court should not have entertained petition under Art. 226 — In present case, contents of GSA, price side letters and correspondence between the parties suggests complex nature of price fixation mechanism — Thus, held, High Court should have relegated parties to arbitration to resolve said complicated dispute by availing services of experts — Order of High Court set aside — Arbitration and Conciliation Act, 1996, Ss. 8, 11 and 5 (Paras 26 to 30)

Allowing the appeal,

Held:

The appellant, vide e-mail dated 2-12-2008, had offered to sign fresh long-term sale agreement with all the existing customers including the respondent for supply of RLNG up to April 2028 at a uniform pooled price in terms of the policy decision of the Government of India. This is evident from the averments contained in Paras 4.9 and 4.10 of the counter-affidavit filed on behalf of the appellant before the High Court, which remained uncontroverted. A reading of the draft RLNG contract and the price side letter sent by the appellant to the respondent also shows that the appellant had offered to supply gas to the respondent at the pooled price but the latter did not agree and insisted on negotiation for the contract price of RLNG to be effective from 1-10-2009. (Para 26)

As many as 150 existing buyers had signed long-term agreements with the appellant without any provision for review of price during the currency of contract. However, the respondent did not accept the offer and did not sign long-term sale agreement. Instead, it agreed to sign the second price side letter which contained a provision for review of the price before expiry of 5 years' term on 31-12-2013. The respondent also insisted that RLNG price for the period from 1-4-2014 to 1-1-2019 should be mutually agreed between the parties. These terms were incorporated in the price side letter sent by the respondent to the appellant vide e-mail dated 26-12-2008. The price side letter which was finally signed by the parties indicate that the price of gas had been mutually agreed between the parties. This was also mentioned in the letters dated 1-10-2011 and 26-12-2011 sent by the respondent to the appellant. Therefore, the premise on which the High Court recorded the conclusion that the appellant had acted arbitrarily was non-existent and on this ground alone the order under challenge is liable to be set aside. (Para 27)

The remedy of arbitration available to the respondent under Para 15.5 of the GSA was an effective alternative remedy and the High Court should not have entertained the petition filed under Article 226 of the Constitution of India. The contents of the GSA, the price side letters and the correspondence exchanged between the appellant and the respondent give a clue of the complex nature of the price fixation mechanism. Therefore, the High Court should have relegated the respondent to the remedy of arbitration and the Arbitral Tribunal could have decided complicated dispute between the parties by availing the services of experts. Unfortunately, the High Court presumed that the negotiations held between the appellant and the respondent were not fair and that the respondent was entitled to the benefit of the policy decision taken by the Government of India despite the fact that it had not only challenged that decision but had also shown disinclination to accept the offer made by the appellant to supply gas at the pooled price and had insisted on mutually agreed price. (Para 28). *Gail (India) Ltd.* v. *Gujarat State Petroleum Corpn. Ltd.*, (2014) 1 SCC 329: (2014) 1 SCC (Civ) 422.

Bench Strength **2**. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 17-9-2013]

Arun Kumar Agrawal v. Union of India, (2013) 7 SCC 1, applied

(c)(1) Alternative remedy/Exhaustion of remedies *(contd.)*

Gujarat State Petroleum Corpn. Ltd. v. GAIL (India) Ltd., Special Civil Application No. 2362 of 2013, decided on 12-6-2013 (Guj), reversed

[281] — Art. 226 — Considerations in application of the rule — Civil suit distinguished from public law remedy — *A writ petition, held, cannot be dismissed on the ground of non-exhaustion of an alternative remedy of a civil court, merely because the matter involves questions of fact — The court has to examine whether the dispute involves a public law element*

A writ petition cannot be dismissed on the ground of alternative remedy of a civil court, merely because the matter involves questions of fact. In such cases the High Court has to primarily see whether the matter is a purely civil dispute or the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. If the matter is a simple boundary dispute, the remedy will lie only in a civil suit. But where the person aggrieved establishes that the State had high-handedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition. (Paras 11 and 10)

But that does not mean that the delay should be ignored or the appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. (Para 10). *Syed Maqbool Ali* v. *State of U.P.*, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493: AIR 2011 SC 2542: (2011) 3 Cal LJ 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-4-2011]

ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553; Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers, (2008) 12 SCC 500, relied on

(2) Delay/Laches

— Art. 226 *See* 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Tenancy and land matters, Arts. 226, 300-A and 14, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

See also 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Non-speaking order/Dismissal in limine/Non-application of mind/Reasoned order — Need for, Art. 226, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493

— Art. 226 — Challenge to acquisition proceedings *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 5-A, 6, 9 and 16, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

[282] — Art. 226 — Maintainability — Delay/Laches — Sufficient cause for delay — Land acquisition matters — If appellant fails to show sufficient cause for delay of two decades, his petitions, held, would be liable to be dismissed (Para 10). *Syed Maqbool Ali* v. *State of U.P.*, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493: AIR 2011 SC 2542: (2011) 3 Cal LJ 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-4-2011]

— Art. 226 — Specific matters and situations — Tenancy and land matters — Maintainability — Delay/Laches/Limitation — Land acquisition matters — Sufficient cause for delay not examined — Matter remanded to examine said issue *See* 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Non-speaking order/Dismissal in limine/Non-application of mind/Reasoned order — Need for, Art. 226, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493

— Arts. 226 and 136 *See also* LIMITATION — 'Limitation Act, 1963', S. 5, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713

[283] — Arts. 226 and 136 — Condonation of delay — "Sufficient cause" — What is — Need for bona fides — *Administrative delay within private body concerned which was susceptible to writ jurisdiction, of more than 7 yrs in filing writ appeal, when may not be condoned — Contention that delay was due to lack of knowledge of order passed by Single Judge of High Court directing that during pendency of petition, services of petitioner should not be disturbed — On facts held, notice of petition was served on earlier Managing Committee of respondent, which had appeared in court and was aware of proceedings and order, and had also undertaken to comply with court's order — Even the District Inspector of Schools had directed Managing Committee to comply with the order — Circumstances in which new Managing Committee, despite taking over charge was not aware of pending litigation or direction of District Inspector not put forth — Thus, it was evident that Managing Committee was resorting to dilatory tactics — High Court erred in condoning delay in such circumstances — Plea of lack of knowledge lacked bona fides — Hence application for condonation of delay filed by respondent before High Court and which High Court had allowed, rejected — Thus, appeal filed by respondent before Division Bench of High Court stood abated — Hence, Single Judge of High Court directed to proceed to decide writ petition of appellant herein expeditiously — Words and Phrases — "Sufficient cause"* (Paras 21 to 33). *Esha Bhattacharjee* v. *Raghunathpur Nafar Academy*, (2013) 12 SCC 649: (2014) 2 SCC (L&S) 595:

(2014) 4 SCC (Cri) 450: (2014) 1 SCC (Civ) 713: (2013) 5 CTC 547: (2013) 5 LW 20: (2014) 1 Cal LT 42.

Bench Strength **2**. Coram: *Anil R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

— Art. 226 and Art. 243-G r/w Sch. XI Item 28 and Arts. 243-N, 254 and 136 — Delay/Laches and petitioner not having locus standi — Effect *See* ESSENTIAL COMMODITIES AND SERVICES — 'Essential Commodities Act, 1955', Ss. 5 and 3, (2013) 11 SCC 783: (2014) 1 SCC (Civ) 607

— Arts. 226 and 300-A *See* LAND ACQUISITION AND REQUISITION — 'Delay/Laches/Limitation', (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

(3) Review

— Art. 226 — Review — Nature and object of — Reason for provision of hearing by same Judge as far as possible *See* CIVIL PROCEDURE CODE, 1908, S. 114 and Or. 47, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473

— Art. 226 — Review of order passed in writ appeal *See* CIVIL PROCEDURE CODE, 1908, S. 122 and Or. 47 R. 5, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473

(4) Res judicata

[284] — Arts. 226, 32 and 136 — Res judicata — Constructive res judicata — Scope and applicability — Constructive res judicata vis-à-vis liberty given by court to seek remedies other than specific issues involved — *Doctrine of res judicata is one of the well-settled rules of jurisprudence and constructive res judicata is a part of the same doctrine — These doctrines are applicable to writ jurisdiction exercised by superior courts of our country — Principles of constructive res judicata applies not only to what is actually adjudicated or determined in a case but to every other manner in which the parties might and ought to have litigated or which was incidental or essentially connected with the subject-matter of litigation — Grant for 30 yrs given under 1926 Regulations in 1934 — In earlier round of litigation, High Court clarifying that under 1926 Regulations, the appellant grantees had no right to claim renewal of said grant — Supreme Court upholding High Court order but giving liberty to appellants to seek any other relief other than seeking fresh grant and/or renewal of grant — In subsequent round of litigation (present round) appellants taking advantage of said liberty given, raising a plea not raised in earlier round of litigation (the plea being that until contingencies under Regn. 151, 1966 Regulations did not arise, the authorities could not cancel their grant) — Said plea, held, is barred by the principle of constructive res judicata and the appellants cannot under the guise of liberty given, claim that the established principle of constructive res judicata will not be applicable — Therefore, rejecting said plea, the appeal of grantees dismissed — Andaman and Nicobar Islands (Land Tenure) Regulations, 1926, Regn. 4(1)(a) — Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966, Regns. 211, 144, 146, 151 and 141 to 143 — CPC, 1908, S. 11*

In the year 1934, the appellants were granted a land for coconut plantation in terms of Regulation 4(1)(*b*) of the Andaman and Nicobar Islands (Land Tenure) Regulations, 1926 (1926 Regulations). But admittedly, in reality, it was a grant under Regulation 4(1)(*a*), 1926 Regulations. After the expiry of grant period (that is 30 years), the authorities wanted to resume the land, but the appellants resisted and by order of statutory appeal, the grant was renewed for another 30 years. In 1994 after expiry of another 30 years, the authorities called upon the authorities to release the land. But the appellants again resisted by filing a writ petition in the High Court. The High Court held that the appellants have no right in the land after the expiry of the lease. And the High Court gave liberty to the appellants to make representations to the authorities. However, the appellants neither preferred any appeal against the High Court order nor filed any representations before the authorities. The order of the High Court attained finality. In 1998 the authorities again issued a fresh notice to the appellants to hand over possession. The High Court again reiterated the legal position it had clarified in earlier writ petition and again directed the appellants to file representations. It is only after getting another notice from authorities that the appellants, in the year 2000 filed representations before the authorities. However, the Lieutenant Governor, by order dated 28-2-2001, declined the representations of the appellants. Aggrieved by the order of the Lieutenant Governor, the appellants filed another writ in the High Court in the year 2001. The High Court held that since the petitioners and his family members had developed the land spending considerable amount, they need not be evicted from the land until and unless such land is actually needed for any public purpose. The Supreme Court however, set aside the said order of the High Court by holding that the order passed by the Lieutenant Governor was legal and proper. The Supreme Court also held that if the respondent has any remedy, as claimed, other than seeking fresh grant and/or renewal, that did not fall for consideration in the representation before the Lieutenant Governor and the High Court. A fresh round of litigation started, the authorities again rejected the claim of appellants and the High Court

(c)(4) Res judicata *(contd.)*

by the impugned judgment in a writ petition filed in 2008 rejected the claim of appellants. Hence the present appeals.

Dismissing the appeal,

Held :

Representations dated 8-5-2000 and 15-5-2000 addressed to the Lieutenant Governor sought a fresh grant in favour of the writ petitioners. Their prayer was declined by the former by his order dated 28-2-2001. The petitioner had filed these representations obviously because the High Court had taken the view that a second renewal of the grant was not permissible under the 1926 Regulations. The filing of the representations clearly amounted to acknowledging the correctness of that position. (Para 18)

Aggrieved by the order passed by the Lieutenant Governor, the writ petitioners approached the High Court again in WP No. 91 of 2001. It was open to them to contend that regardless whether a fresh grant was made in their favour or not and regardless whether or not a second renewal was permissible under the 1926 Regulations, they had acquired a vested right under the 1966 Regulations to continue in occupation of the land till such time one of the contingencies enumerated under Regulation 151 of the 1966 Regulations arose disentitling the writ -petitioners/occupants from continuing in occupation of the land. Such a plea could and indeed ought to have been raised if the appellants intended to agitate that issue for adjudication. No such contention was, however, urged before the High Court in the said petition. On the contrary, the High Court took the view that the occupants need not be evicted from the land only so long as the same was not needed for any public purpose. The High Court referred to the 1966 Regulations to suggest that a fresh grant was permissible even under the provisions of the said Regulation thereof. (Para 19)

The contention now sought to be urged that the occupants can continue to occupy the land in question in perpetuity without even a renewal or without a fresh grant in their favour subject only to the condition that they did not violate the provisions of Regulation 151 was available to the occupants which could and indeed ought to have been raised by them at that stage. Inasmuch as the occupants did not urge any such point or raise any such contention in the previous round of litigation ending with the order of the Supreme Court in *Shiv Chander More*, (2008) 4 SCC 690, they are debarred from doing so in the present proceedings on the principles of constructive res judicata. That constructive res judicata in principle applies even to writ proceedings is fairly well settled. (Para 20)

It is no longer open to the appellants to contend that the principles of constructive res judicata would not debar them from raising the question which, could and indeed ought to have been raised by them in the previous round of litigation. The High Court was, in that view of the matter, perfectly justified in holding that the plea sought to be raised by the appellants in the purported exercise of liberty given to them by the orders of the Supreme Court dated 9-4-2008 in *Shiv Chander More case* was not legally open and should not be allowed to be urged. (Para 24)

The doctrine of res judicata is one of the most fundamental and well-settled rules of jurisprudence. The doctrine is found in all legal systems of civilised society in the world. It is founded on a twofold logic, namely, (*1*) that there must be finality to adjudication by competent court; and (*2*) no man should be vexed twice for the same cause. These two principles attract the doctrine of res judicata even to inter partes decisions that may be erroneous on a question of law. That the doctrine is applicable even to writ jurisdiction exercised by superior courts in this country. (Para 21)

The principles of constructive res judicata is also a part of the very same doctrine. The principles of constructive res judicata apply not only to what is actually adjudicated or determined in a case but every other matter which the parties might and ought to have litigated or which was incidental to or essentially connected with the subject-matter of the litigation. (Paras 22 and 23)

In the result this appeal fails and is, hereby, dismissed but without any orders as to costs. (Para 35).

Shiv Chander More v. *Lt. Governor*, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259: AIR 2014 SC 2669: (2014) 2 Cal LJ 225: (2014) 2 Cal LT 67.

Bench Strength **2**. Coram: **T.S. Thakur** and *Chockalingam Nagappan*, JJ. [Date of decision: 7-3-2014]

Ratan Kaur v. Union of India, (1997) 10 SCC 61; Lt. Governor v. Shiv Chander More, (2008) 4 SCC 690, relied on

Shiv Chander More v. Lt. Governor, MAT No. 004 of 2011, order dated 31-1-2011 (Cal), affirmed

Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara, AIR 1964 SC 1013; Devilal Modi v. STO, AIR 1965 SC 1150; Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715: 1990 SCC (L&S) 339: (1990) 13 ATC 348, followed

— Arts. 226 and 136 — Constructive res judicata

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Cinemas, Videos and Cable Television' — Delhi Cinematograph Rules, 1953, Rr. 10, 24, 37 and Sch. I, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(5) Questions of Fact

— Art. 226 *See* TENANCY AND LAND LAWS — 'Karnataka Land Reforms Act, 1961 (10 of 1962)', S. 48-A, (2014) 13 SCC 688: (2014) 5 SCC (Civ) 771

— Art. 226 — A writ petition, held, cannot be dismissed on the ground of non-exhaustion of an alternative remedy of a civil court, merely because the matter involves questions of fact — The court has to examine whether the dispute involves a public law element *See* 'Article 226' — Maintainability of writ petition — Alternative remedy/Exhaustion of remedies, Art. 226, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493

[285] — Art. 226 — Concurrent findings of fact — Interference with — *Held, High Court without coming to any conclusion that findings of fact recorded by the two courts below were perverse deciding the writ on basis of surmises and conjectures — There was no patent infirmity in the findings recorded by the trial and appellate courts on the issue of sub-letting — Hence, order passed by High Court cannot be sustained — Eviction restored — Provincial Small Cause Courts Act, 1887, S. 25* (Paras 6 and 7). *Arun Kumar Keshari* v. *Ganesh*, (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 14-9-2009]

[286] — Art. 226 — Writ petition alleging that revisional authority/court exceeded its jurisdiction — Revisional authority by interfering with concurrent findings of subordinate authorities/courts on basis of new facts, exceeded its jurisdiction — *Held, High Court erred in concurring with findings of revisional authority without observing that revisional authority had exceeded its jurisdiction and also erred in recording its reasons by interpreting facts of the case — Orders of revisional authority and High Court, set aside — U.P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 48 — CPC, 1908, S. 115*

The father of the appellants, *M* and *S* were three shareholders of the land which was recorded in the name of one *B*. The appellants filed objections before the Consolidation Officer for deletion of the name of *B* alleging that the same was fictitiously entered in the revenue records. Respondents 1 and 2, claiming to be beneficiaries of a will allegedly executed by *B* in their favour, also filed their objections. The Consolidation Officer accepted the objections of the appellants and deleted the name of *B* from the revenue records. The respondents filed an appeal before the Assistant Settlement Officer but the same was dismissed. The respondents then preferred revision petition before the Deputy Director, Consolidation under Section 48 of the U.P. Consolidation of Holdings Act. The respondents produced certified copies of documents executed in 1934 showing that the share of the appellants' father was purchased by *B* in auction-sale. The revisional authority, by placing reliance on the document relating to the auction-sale, found that *B*'s name in the revenue records of the land in question had been registered as a co-owner even after abolition of zamindari and upheld the claim of the respondents that *B* had purchased the share of the appellants' father in the auction-sale. The appellants filed a writ petition against the order of the revisional authority. They urged before the High Court that the revisional authority could not have accepted the secondary evidence at the stage of revision and reversed the concurrent findings of the appellate authority. The Single Judge of the High Court dismissed the writ petition.

Allowing the appeal and restoring the order of the Consolidation Officer as affirmed by the appellate authority,

Held :

Section 48 of the Act is in pari materia with Section 115 of the Code of Civil Procedure, 1908. The power of the revisional authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the original and the appellate authorities are within their jurisdiction, the revisional authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. The revisional authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts. (Paras 15 to 17)

The High Court has erred in concurring with the findings of the revisional authority by failing to observe that the revisional authority had exceeded its jurisdiction conferred upon it under the Act. It has further erred in concurring with the decision of the revisional authority on the factual grounds which is beyond the jurisdiction of it. (Paras 18 to 21). *Jagdamba Prasad* v. *Kripa Shankar*, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 4-4-2014]

Sher Singh v. Director of Consolidation, (1978) 3 SCC 172, followed

Tata Cellular v. Union of India, (1994) 6 SCC 651; Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443: (2012) 3 SCC (Civ) 184: (2012) 3 SCC (Cri) 198, relied on

(c)(6) Frivolous writ petition *(contd.)*

Jagdamba Prasad v. Director of Consolidation, Civil Misc. Writ No. 4688 of 1974, decided on 2-9-2003 (All), reversed

(6) Frivolous writ petition

— Art. 226 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 226 — Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[287] — Arts. 226 and 136 — Illegal/unauthorised constructions — Frivolous litigation for 15 yrs — Direction for demolition issued by High Court with costs and not entertaining issues already settled in civil court, confirmed — *Writ petitioner under Art. 226 dragging on litigation for 15 yrs and not paying compounding fees for illegal construction — Petitioner not successful in civil court against direction for payment of compounding fees by authorities — Petitioner thereafter pursuing matter before administrative authorities, then before High Court but all directing demolition — High Court not entertaining issues that could have been raised before civil court and dismissing LPA of petitioner with costs of Rs 25,000 — Said expeditious demolition order by Division Bench of High Court, on facts, held, sustainable and justified and does not warrant interference*

The petitioner did not pay the compounding fees and did not regularise the illegal constructions. The petitioner also lost the matter in the civil court. When the petitioner, therefore, pursued the matter before the authorities. The authorities directed demolition. The petitioner was able to obtain an interim order against said demolition by filing a writ petition. After taking the benefit of interim order for about a year, the petitioner withdrew the writ petition with a liberty to file fresh petition.

The fresh writ petition was dismissed by the High Court and letter patents appeal was also not entertained by Division Bench of the High Court. In the impugned order the Division Bench concluded that the appellant raised unauthorised construction way back in 1996 and was successful in delaying the action by the Municipal Corporation for the last 15 years. The High Court did not entertain issues which could have been raised during the said civil suit. The Division Bench therefore, directed the Municipal Corporation to take immediate action for removal of unauthorised constructions and submit its report to the High Court within three months.

Dismissing the SLP,

Held :

This petition filed against the impugned orders of the Division Bench of the High Court dismissing the letters patent appeal filed by the petitioner against the order of the Single Judge of the High Court dismissing the writ petition filed by him with costs of Rs 25,000 is a frivolous piece of litigation. (Para 1)

The reasons assigned by Single Judge and the Division Bench for refusing to entertain the petitioner's prayer quashing the demand notice and order dated 7-12-2004 passed by the Commissioner and Secretary, Urban Development Department are legally correct and there is no valid ground, much less justification, for exercise of power by the Supreme Court under Article 136 of the Constitution to restrain the respondents from demolishing the construction raised by the predecessor of the petitioner. (Para 12)

The Commissioner, Municipal Corporation is ordained to implement the direction given by the Division Bench of the High Court within a period of 15 days of the receipt of copy of this order and submit a report to the High Court within next one week. The Registry of the High Court shall list the case before the Bench concerned. If the Bench concerned of the High Court finds that the authorities of the Corporation have failed to implement the direction contained in order dated 27-4-2011, then it shall initiate proceedings against the erring officers under the Contempt of Courts Act, 1971. The Registry is directed to send copies of this order to Registrar of the High Court, by fax. (Paras 14 and 15). *Sanjay Adlakha* v. *State of Haryana*, (2011) 15 SCC 387: (2014) 2 SCC (Civ) 497.

Bench Strength 2. Coram: *G.S. Singhvi* and *Chandramauli Kr. Prasad*, JJ. [Date of decision: 1-6-2011]

Shanti Sports Club v. Union of India, (2009) 15 SCC 705: (2009) 5 SCC (Civ) 707, relied on

Sanjay Adlakha v. State of Haryana, LPA No. 523 of 2009 order dated 27-4-2011 (P&H); Bhupinder Singh v. Karnail Singh, RSA No. 2134 of 2004 decided on 7-4-2005 (P&H), approved

(7) Abuse of process of court/law/fraud on court

— Art. 226 — Conduct of litigant not amenable to rule of law — Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice — Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance *See* RULE OF LAW, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 226 — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 226 — Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(d) Procedure to be followed re Art. 226

(1) Matters at large

[288] — Art. 226 — Exercise of Power — Approach of High Court — Confining to issue involved in matter — Emphasised — *Authority dealing with land ceiling observed that appellant and her husband were not divorced and they took such plea only to escape from clutches of law — Appellate authority confirmed such conclusion — High Court while dealing with matter, observed that pronouncement of word talak thrice was unconstitutional — Unsustainability of — Held, subject-matter of writ petition never required examination of such important constitutional issues — Hence, Supreme Court declared that such observations would be invalid* (Para 4). *Khatoon Nisa* v. *State of U.P.*, (2014) 12 SCC 646: (2014) 5 SCC (Cri) 170: (2014) 5 SCC (Civ) 155.

Bench Strength **5**. Coram: *G.B. Pattanaik, M.B. Shah, Doraiswamy Raju, S.N. Variava* and *D.M. Dharmadhikari*, JJ. [Date of decision: 14-8-2002]

(2) Recusal by Judge

— Art. 226 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Art. 226 — Refusal to recuse when plea for recusal a ploy to unnecessarily prolong the matter — Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(e) Exercise of power under Art. 226 by High Court — Relief

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(1) Broadly

— Art. 226 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Generally, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Judicial independence and courage, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(2) Abuse of process of court/law/fraud on court

— Art. 226 — Duty to consider submissions/contentions/arguments of parties — Scope — Held, it is the onerous duty of courts to deal with submissions/contentions/arguments of parties, however brazen they may be (*see also* Shortnote *B*) *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(3) Issues in question not determined

— Art. 226 *See also* PRACTICE AND PROCEDURE — 'Judgment/Decree/Order', (2012) 13 SCC 419: (2014) 5 SCC (Civ) 654

[289] — Art. 226 — Judgment — Findings — Specific findings on issues raised must be given by Court — *High Court noticed questions of law raised and judgments cited at the Bar by parties but rendered no findings thereon — Though appeal against High Court's judgment raised important questions of law but Supreme Court could not get benefit of High Court's findings — Held, impugned judgment set aside and matter remanded to High Court for giving its specific findings — Interlocutory applications filed during pendency of appeal disposed of as not pressed for ensuring expeditious disposal of the matter — However, two applications for impleadment as party respondents allowed — CPC, 1908, Or. 20 R. 5 and Or. 41 Rr. 29 to 31. Kishore Rungta* v. *State of Rajasthan*, (2011) 15 SCC 495: (2014) 2 SCC (Civ) 627: (2011) 112 Cut LT 148.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 20-1-2011]

[290] — Arts. 226 and 136 — Remand for decision afresh — High Court not deciding all issues arising in matter before it — Only attempting to answer one of the issues — Necessity for courts whose orders are not final and appealable to decide lis on all issues raised though in its comprehension it can be decided on a single issue

(e)(4) Non-speaking order/Dismissal in limine/ Non-application of mind/Reasoned order — Need for *(contd.)*

without going into other questions raised — *Appellants claiming accrual of rights in land under leases granted to them by orders of Tahsildar — Two questions arising before High Court for determination, whether case records and orders of Tehsildar were forged and fabricated and lands shown as "kanta jungle" in record-of-rights, transfer was void being contrary to provisions of Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948 — High Court without recording any specific finding on first question proceeding on basis that lands were covered under 1948 Act, leases granted were void, concluding that no legal right accrued to appellants — Held, two questions that arose before High Court may not be independent of each other and in fact answer to the second question may be contingent on an effective resolution of the first — Conclusion of High Court indicates a mere passive acceptance of stand projected by the State without any attempt to verify the correct position on the issues — Manner in which High Court proceeded to decide writ petition, by an inconclusive and vague determination of the first issue and instead, by attempting to answer the second, is not only unacceptable but certain fundamental errors are inherent in such approach — High Court's order set aside and matter remanded to it for a de novo decision — Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948 (1 of 1948), S. 2(d)* (Paras 18 to 24)

It is necessary to reiterate herein a fundamental principle of law that all courts whose orders are not final and appealable, should take notice of. All such courts should decide the lis before it on all issues as may be raised by the parties though in its comprehension the same can be decided on a single or any given issue without going into the other questions raised or that may have arisen. Such a course of action is necessary to enable the next court in the hierarchy to bring the proceeding before it to a full and complete conclusion instead of causing a remand of the matter for a decision on the issue(s) that may have been left undetermined as has happened in the present case. The above may provide a small solution to the inevitable delays that occur in rendering the final verdict in a given case. (Para 23). *Chandradhoja Sahoo* v. *State of Orissa*, (2012) 13 SCC 419: (2014) 5 SCC (Civ) 654: AIR 2013 SC 367: (2013) 116 Cut LT 57.

Bench Strength **2**. Coram: *P. Sathasivam* and **Ranjan Gogoi**, JJ. [Date of decision: 14-12-2012]

Meghmala v. G. Narasimha Reddy, (2010) 8 SCC 383: (2010) 3 SCC (Civ) 368: (2010) 3 SCC (Cri) 878, followed

Chandradhoja Sahoo v. Board of Revenue, WP (C) No. 337 of 2008, decided on 13-5-2009 (Ori), reversed

(4) Non-speaking order/Dismissal in limine/Non-application of mind/ Reasoned order — Need for

[291] — Art. 226 — Allottee of house praying that High Court to direct authorities to evict third-party encroachers — High Court giving relief without considering facts and legal position — Unsustainability — *Specific Relief Act, 1963, Ss. 5 and 6* (Para 2). *Bachchu Singh* v. *State of U.P.*, (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 3-1-2011]

[292] — Art. 226 — Non-speaking order — Matter remanded for decision afresh — *Appellant filing writ claiming compensation for his lands illegally taken away for construction of public road — High Court not examining as to: (1) whether it is a simple boundary dispute requiring a civil suit or a dispute having a public law element involving violation of any fundamental right or arbitrary and high-handed action, and (2) whether there was good and satisfactory explanation for decades of delay in filing writ from the date of dispossession — High Court on the other hand probably assuming that appellant approached for enhancement of compensation — High Court therefore, dismissing writ on ground of non-exhaustion of alternative remedy under S. 18, LA Act and giving liberty to appellant to file S. 18 LA Act Reference — Said non-speaking order of High Court's, held, is not sustainable — Matter therefore, remanded to High Court to decide matter on merits and on relevant issues indicated*

In 1996, the appellant filed a complaint before the Lokayukta, the Additional District Magistrate (Land Acquisition) that in 1995 when he got his lands measured, he found that it had been illegally used for construction of a road and that in the acquisition proceedings for said land which had been done in 1982/1983, he had not been paid any compensation. The said complaint was however closed on 7-9-1999 as time-barred, in view of the delay of 12 years in seeking relief.

A writ filed thereagainst was dismissed by non-application of mind with an observation that the petitioner could have taken recourse to Section 18 LA Act, if he wanted enhancement of compensation.

Allowing the appeal,

Held :

The High Court was not justified in dismissing the writ petition on the ground that the remedy was under Section 18 LA Act. An application under Section 18 LA Act cannot be filed in respect of a land which has not been acquired at all. (Paras 9 and 8)

The appellant whose land was taken away without acquisition proceedings could have either filed a civil suit for recovery of possession and/or for compensation. In the alternative the appellant could have filed a writ under Article 226 if he could show that State action was arbitrary, irrational, unreasonable, biased, mala fide or without the authority of law. The appellant followed the second course. (Para 9)

The order of the High Court dismissing the appellant's writ was virtually a non-speaking order and apparently proceeded on the basis that the appellant was seeking increase in compensation for an acquired land. The matter therefore, requires to be reconsidered by the High Court, on merits. (Para 9)

A writ petition cannot be dismissed on the ground of alternative remedy of a civil court, merely because the matter involves questions of fact. In such cases the High Court has to primarily see whether the matter is a purely civil dispute or the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. If the matter is a simple boundary dispute, the remedy will lie only in a civil suit. But where the person aggrieved establishes that the State had high-handedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition. (Paras 11 and 10)

But that does not mean that the delay should be ignored or the appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. (Para 10)

The High Courts should be cautious in entertaining such belated writ petitions filed decades after the dispossession, seeking directions for acquisition and payment of compensation. When such claims are made after several decades, the State would be at a disadvantage to contest the claim, as it may not have the records to show in what circumstances the lands were given/donated and whether the land was given voluntarily. Therefore, belated writ petitions, without proper explanation for the delay, are liable to be dismissed. (Para 12)

As the High Court has not examined the relevant questions, the matter is remanded to High Court for fresh consideration and disposal of the writ petition in accordance with law. No opinion is expressed on the merits of the matter. (Para 13). *Syed Maqbool Ali* v. *State of U.P.*, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493: AIR 2011 SC 2542: (2011) 3 Cal LJ 16.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-4-2011]

(5) Violation of Natural Justice/Discrimination by High Court

— Arts. 226, 300-A and 14 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 54 and 23, (2013) 14 SCC 506: (2014) 2 SCC (Civ) 780

(6) Pendency/Delay in progress of proceedings

— Art. 226 *See* RENT CONTROL AND EVICTION — 'U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972)', S. 21(1)(a), (2011) 15 SCC 794: (2014) 2 SCC (Civ) 762

(f) Writs

— Art. 226 — Habeas corpus — Habeas corpus for custody of child *See* CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW — 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

— Arts. 226 and 136 — Habeas corpus — Child custody *See* FAMILY AND PERSONAL LAWS — 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

(g) Costs

— Art. 226 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(h) Appeal against/Review of orders passed under Art. 226/Writ appeals/LPAs

[293] — Art. 226 — Writ appeal — Scope of interference — Particular direction of Single Judge of High Court against a party — No appeal preferred thereagainst by that party — Interference in writ appeal with said direction — Held, should not have been made — *CPC, 1908, Or. 41 R. 2. J. Rajiv Subramaniyan* v. *Pandiyas*, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295: AIR 2014 SC 1710: (2014) 4 MPLJ 270: (2014) 186 Comp Cas 73: (2014) 2 CTC 323: (2014) 6 Mah LJ 22: (2014) 104 ALR 177: (2014) 137 AIC 187: (2014) 4 LW 590.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 14-3-2014]

— Art. 227 *See* Art. 226

See also CIVIL PROCEDURE CODE, 1908, Or. 21 R. 89, (2014) 6 SCC 397: (2014) 3 SCC (Civ) 572

See also (2014) 2 SCC 246: (2014) 1 SCC (Civ) 678

See also PRACTICE AND PROCEDURE — 'Pleadings/New Plea/Additional Plea/Alternative Plea', (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

[294] — Art. 243-G r/w Sch. XI Item 28 and Arts. 243-N, 254 and 136 — Art. 243-G r/w Sch. XI Item 28, reiterated, is not an enabling provision — Effect of upon delegated powers under the EC Act

Pursuant to the delegation of power under Section 5, Essential Commodities Act, 1955 (EC Act), the State Government passed the U.P. Scheduled Commodities Distribution Order, 1990 (1990 Order) on 3-7-1990. The 1990 Order conferred power on the District Magistrate or an authority designated by him to grant/cancel the licences for fair price shops. Thereafter by Order dated 10-8-1999, the State Government withdrew the said power from the District Magistrate and conferred it on Gram Panchayats. However, as there was no proper distribution and there were complaints, the Government withdrew the Order dated 10-8-1999 vide G.O. dated 13-1-2000 and reintroduced the earlier policy dated 3-7-1990.

Zila Parishad, Ghaziabad, Respondent 1, filed the writ petition before the High Court challenging the order dated 13-1-2000 i.e. order of withdrawal of the power of PDS from the Gram Panchayats, on the ground that, in view of the provisions of Sections 32 and 33 of the U.P. Kshetriya Panchayats and Zila Panchayats Act, 1961, PDS could only be assigned to the Kshetriya and Zila Panchayats. The High Court allowed the said writ petition on the ground that matters listed in the Schedule XI, Constitution included PDS as Item 28 and, therefore, the entire PDS could not be carried by State Government orders issued under the EC Act. The High Court found that the delegation of authority to the District Magistrate was not in consonance with Article 243-G of the Constitution and the laws made thereunder were absolute. In view of the Constitution (73rd Amendment) Act, 1992 w.e.f. 24-4-1993, it was not open to the State Government to assign/confer such powers upon the District Magistrate. Hence, the present appeal.

The Government counsels submitted that Article 243-G is merely an enabling provision and therefore, unless the State Government assigns PDS to Kshetriya and Gram Panchayats they cannot claim it as a matter of right. It was further submitted that if the Central legislation is occupying a field (i.e. orders made under EC Act), any law made by the State which is inconsistent or in conflict with the Central law would be void.

The counsel for Respondent 1 submitted that the 73rd Amendment to the Constitution which introduced Articles 243-G and 243-N would become meaningless if decentralisation of power is not effected by handing over PDS to Kshetriya and Gram Panchayats.

Allowing the appeal,

Held :

The respondent, Zila Parishad filed the writ petition for quashing of the order dated 13-1-2000, though by no stretch of imagination the said Respondent 1 could claim itself to be an aggrieved party. None of the Gram Panchayats was party to the said petition. The High Court reached its decision on the legal issues, without considering the locus standi of the Zila Parishad, Respondent 1. (Para 10)

The High Court has taken a view that the provision of Article 243-G is merely an enabling provision, and it is not a source of legislation. This view of the High Court seems to be correct. The enabling provisions are further subject to the conditions as may be specified. Therefore, it is for the State Legislature to consider conditions and to make laws accordingly. It is also open to the State to eliminate or modify the same. Thus Article 243-G read with Schedule XI is not a source of legislative power, and it is only an enabling provision that empowers a State to endow functions and devolve powers and responsibilities to local bodies by enacting relevant laws. The local bodies can only implement the schemes entrusted to them by the State. Be that as it may, there is no challenge by Respondent 1 to the aforesaid view taken by the High Court, therefore, there is no occasion to consider the issue any further. (Paras 23 to 25). *State of U.P.* v. *Zila Parishad, Ghaziabad*, (2013) 11 SCC 783: (2014) 1 SCC (Civ) 607: AIR 2013 SC 1276.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *V. Gopala Gowda*, JJ. [Date of decision: 1-2-2013]

[295] — Arts. 243-Q, 243-W(a)(i) & (ii) r/w Sch. XII, Entry 17 and Arts. 265, 14 & 300-A — Powers and authority of Nagar Panchayats — Nature and Scope — Public amenities — Power to charge fee for provision of — *Nagar Panchayat, is a unit of self-government, which is a sovereign body having both constitutional and statutory status — Considerable powers are conferred on it to carry out various schemes for economic development and social justice at the local level —*

It can always utilise its assets in a profitable manner to its advantage to raise funds for carrying out the various welfare activities

These cases were concerned with the question whether the appellant, the Nagar Panchayat is justified in exercise of the powers conferred under provisions of the M.P. Municipalities Act, 1961, to impose parking fee on the owners of vehicles, motors, trucks, buses, matadors, etc. The High Court held that the Nagar Panchayat has no power to collect that amount.

The appellant had thus filed the present appeal.

Allowing the appeal,

Held :

The basic fundamental principle is that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded. (Para 3)

The Constitution (Seventy-fourth Amendment) Act, 1992, Part IX-A which deals with municipalities, came into force on 20-4-1993. Under Articles 243-P(*e*), 243-Q and Article 243-W(*a*), a Nagar Panchayat is a unit of self-government, which is a sovereign body having both constitutional and statutory status. Articles 243-Q and 243-W(*a*)(*i*) and (*ii*) read with Entry 17, confer considerable powers on the Nagar Panchayat to carry out various schemes for economic development and social justice. Municipalities need funds for carrying out the various welfare activities and for the said purpose, it can always utilise its assets in a profitable manner to its advantage so that various welfare activities entrusted to it under law could be properly addressed and implemented. The bus-stand has been provided by the Nagar Panchayat for the benefit of all vehicle owners and the passengers, spending public money. The Nagar Panchayat has to get a reasonable return for its upkeep and maintenance. Section 358(7)(*m*) of the 1961 Act has to be read in the light of the Seventy-fourth Constitutional Amendment Act. Clause 7(*m*) of Section 358 of the M.P. Municipalities Act, 1961 empowers the municipality to regulate or prohibit the use of any ground under its control and it does not compel anybody to use it as halting place of vehicles. Articles 243-W(*a*)(*i*) and (*ii*) read with Entry 17 of the Twelfth Schedule to the Constitution and clause (7)(*m*) of Section 358 of the 1961 Act and the general principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the bus-stand owned and maintained by it. Needless to say, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law. No illegality is found in demand for the parking fee in using the bus-stand. Consequently, both the appeals are allowed. The judgments of the High Court are accordingly set aside and the resolution passed by the appellants imposing the bus-stand fee is upheld. (Paras 5, 6, 13, 14 and 15). *Nagar Panchayat, Kurwai* v. *Mahesh Kumar Singhal*, (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 6-9-2013]

Municipal Council, Bhopal v. Sindhi Sahiti Multipurpose Transport Coop. Society Ltd., (1973) 2 SCC 478; Municipal Council, Manasa v. M.P. SRTC, (1997) 11 SCC 640, statutorily superseded

Rahul Singhal v. Nagar Panchayat, Kurwai, Writ Appeal No. 458 of 2007, order dated 1-5-2008 (MP); Mahendra Kumar Gupta v. State of M.P., Writ Appeal No. 147 of 2010, order dated 15-4-2010 (MP), reversed

— **Art. 243-N** *See* Art. 243-G r/w Sch. XI Item 28

— **Art. 243-W(a)(i) r/w Sch. XII, Entry 17** *See* Art. 243-Q

— **Art. 243-W(a)(i) & (ii) r/w Sch. XII Entry 17** *See* LOCAL GOVERNMENT — 'Municipalities' — Municipal Taxes or fees, (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

— **Art. 243-W(a)(ii) r/w Sch. XII, Entry 17** *See* Art. 243-Q

— **Arts. 245 & 246** *See* Art. 13

— **Arts. 246 and 254(2), Sch. VII List I Entries 43 to 45, List II Entries 1, 30 and 32 and List III Entries 1, 8, 13 and 21 and Arts. 141, 32, 14 and 21 — Andhra Act, held, is not repugnant to any Central law — Yet said issue cannot be raised as it received President's assent under Art. 254(2)** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Non-Scheduled Banks/NBFCs/Chit Funds/ Saving Schemes/Financial Leasing/Hire- Purchase' — Fraudulent/Fictitious Financial Establishments/Deposit Schemes, Ss. 3, 5, 8 and 9 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Andhra Act), (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

— **Art. 254** *See* Art. 243-G r/w Sch. XI Item 28

See also TRUSTS AND TRUSTEES — 'Bombay Public Trusts Act, 1950 (29 of 1950)', (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— **Arts. 254 and 141** *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 15, 1(3), 2(e) & (g), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— **Art. 265** *See* Art. 243-Q

See also TENANCY AND LAND LAWS — 'Gujarat Tenancy and Agricultural Lands Act, 1948 (Bom Act 47 of 1948)', S. 43, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161

— **Art. 299** *See* Art. 14

— **Art. 300-A** *See* Art. 14; Art. 226; Art. 243-Q

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Ss. 13 and 37, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9, (2014) 5 SCC 660

— Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 6 and 18, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

— Ss. 16, 4(1), 6(1) and 11, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

— S. 23, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563

— Ss. 23, 4 and 6, (2014) 13 SCC 193: (2014) 5 SCC (Civ) 698

— Ss. 23, 23(1-A), 4 and 6, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

— Ss. 28, 23, 18, 4 and 6, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

— 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', S. 24(2), (2014) 6 SCC 583

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 7, 8 and 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— S. 60, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 105, 108(c), 109, 111, 58 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Art. 300-A — Dispossession of landowners prior to issuance of preliminary notification under S. 4(1) of 1894 Act — Claim for rent/damages for land concerned from the date the possession thereof taken till the date of preliminary notification issued under LA Act, allowed *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4(1), 16 and 11, (2014) 13 SCC 613: (2014) 5 SCC (Civ) 735

— Art. 300-A — "Property" — Right of redemption of mortgagor, held, is "property" protected under Art. 300-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[296] — Art. 300-A — Transfer of land from agricultural to non-agricultural purpose subject to sanction of Collector and on payment of requisite consideration (premium) to State Government under S. 43, Gujarat Tenancy and Agricultural Lands Act, 1948 — Premium payable to State being 80% of the valuation of land determined as per Jantri rates — *Held, does not amount to expropriation and hence not hit by Art. 300-A — Furthermore, State Government in 2011 has reduced the levy to 40% which is quite reasonable — Words and Phrases — "Expropriation"* (Para 23). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength **2**. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

Gohil Jesangbhai Raysangbhai v. State of Gujarat, LPA No. 1127 of 2008, decided on 3-5-2011 (Guj), affirmed

— Arts. 300-A and 14 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4 and 6 [as amended by Act of 1984], (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

— Ss. 5-A, 4 and 16, (2014) 3 SCC 203

— Ss. 5-A and 6(1), (2014) 6 SCC 564

— Ss. 5-A(1) & (2), 4 and 6, (2013) 11 SCC 235

— Ss. 5-A(1) & (2), 4(1) and 6(1), (2013) 11 SCC 578

— Ss. 23, 28 and 48, (2013) 14 SCC 8

See also LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40(3)(jj)(a), 12 and 20, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

— Arts. 300-A, 14, 21 and 136 — Relief — Ameliorative relief *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 6, 18 and 23, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

[297] — Arts. 300-A, 14, 226 and 136 — Withdrawal from acquisition — Discrimination/ Mala Fides — Reiterated, State Governments cannot pick and choose some landowners and release them from acquisition and deny same benefit to others similarly situated — Held, reason of quality of construction for denying exclusion from acquisition is discriminatory — *State Government categorised lands and exempted only 'A' class constructions which fall within the ambit of acquisition scheme for construction of ring road and development of area for residential, commercial and public buildings without making any such provision for small plots having sanctioned structures — Discrimination — If any — Since now State Government has no objection to release land which is subject-matter of acquisition other than land falling under ring road and appellants do not want to question acquisition of land for ring road but mainly directed against utilisation of acquired land for other purposes, held question of discrimination is*

no longer in question — Land Acquisition Act, 1894, Ss. 48, 4 and 6 (Paras 21 to 25). *Sham Lal* v. *State of Punjab*, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671.

Bench Strength **2**. Coram: **G.S. Singhvi** and *Gyan Sudha Misra*, JJ. [Date of decision: 6-8-2013]

— **Arts. 300-A, 14 and 265** *See* PROPERTY LAW — 'Ownership and Title', (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

— **Arts. 300-A and 19(1)(f)** *See* LAND ACQUISITION AND REQUISITION — 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Ss. 24(1) & (2), (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274

— Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897, (2014) 3 SCC 183

— **Arts. 300-A, 21 and 14** *See* LAND ACQUISITION AND REQUISITION — 'Eminent domain', (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

[298] — Arts. 300-A and 31-A(1) second proviso — Right to property — *Held, after deletion of Arts. 31(2) and 19(1)(g) there is no fundamental right to hold property — But right to compensation on compulsory acquisition is still available under the second proviso to Art. 31-A(1) subject to the limitations specified therein — Town Planning — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 20, 12 and 40* (Paras 44 and 45). *Ahmedabad Municipal Corpn.* v. *Ahmedabad Green Belt Khedut Mandal*, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710: AIR 2014 SC 2377: (2014) 3 Guj LR 2516.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 9-5-2014]

P. Vajravelu Mudaliar v. Collector (LA), AIR 1965 SC 1017; Union of India v. Metal Corpn. of India Ltd., AIR 1967 SC 637, held, overruled

[299] — Arts. 300-A and 136 — Remand — Non-consideration of material evidence — Giving appellant landowners another opportunity to adduce evidence — Held, failure or omission to lead evidence to prove claim in present case was based on misconception about legal requirement as to evidence needed to prove cases of enhancement of compensation — Hence, there is no reason to deny another opportunity to landowners to prove their cases by adducing evidence in support of their claim for enhancement — *Impugned judgments and orders modified to the extent that while enhancement order by Reference Court set aside, matters remanded to Reference Court for fresh disposal in accordance with law after giving landowners opportunity to lead evidence — Since, however, opportunity is granted ex debito justitiae, if Reference Court eventually comes to the conclusion that a higher amount was due and payable to the appellant landowners, such higher amount including solatium due thereon would not earn interest for the period between date of judgment of Reference Court and date of judgment and order of Supreme Court for higher compensation — Land Acquisition Act, 1894, Ss. 18 and 23* (Paras 14 to 16). *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397: AIR 2013 SC 3452.

Bench Strength **2**. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 5-7-2013]

Ramanlal Devchand Shah v. State of Maharashtra, First Appeal No. 179 of 1992, order dated 14-6-2011 (Bom); State of Maharashtra v. Kantilal Manikchand Shah, (2011) 3 Bom CR 709, reversed

— **Arts. 300-A and 136 — Scope of interference — Interference in land acquisition matters** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 54, 18 and 23, (2011) 15 SCC 133: (2014) 2 SCC (Civ) 350

— **Arts. 300-A, 136 and 226** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 54, 4(1), 5-A(1), 5-A(2) and 6(1), (2013) 11 SCC 653: (2014) 1 SCC (Civ) 229

[300] — Arts. 300-A, 142 and 136 — Relief — Land acquisition matter — Complete justice — Held, to ensure that appellants are not fleeced by the middlemen, detail directions issued and time-frame fixed for disbursal of compensation (Para 12). *Salaha Begaum* v. *Land Acquisition Officer*, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563: (2013) 97 ALR 200: (2013) 123 AIC 255.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 3-12-2012]

— **Arts. 300-A and 265** *See* SERVICE LAW — 'Pension' — Generally, (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

— **Arts. 300-A, 265 and 13 — "Law" — Does not include executive instructions/orders/circulars** *See* ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars, (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

— **Art. 315** *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 2(h)(a), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **Art. 371-D** *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Andhra Pradesh Civil Courts Act, 1972 (19 of 1972), S. 1(3), (2013) 11 SCC 362: (2014) 1 SCC (Civ) 555

— **Art. 372** *See* PROPERTY LAW — 'Common law principles', (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

COLOURABLE EXERCISE OF POWER/MALA FIDES

See ADMINISTRATIVE LAW — 'Natural Justice'

See also NATURAL JUSTICE

COMPENSATION/RELIEF/INTEREST

See CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power

COMPENSATION/TERMINATION/DISCHARG/ PENALTY FOR DELAYED PERFORMANCE

See CONTRACT AND SPECIFIC RELIEF — 'Performance of Contract' — Time of Performance

COMPLIANCE WITH JUDICIAL PRECEDENTS/ IMPLEMENTATION OF COURT ORDERS

See ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function

See also EXECUTIVE WING OF STATE

COMPOSITE CONTRACT/MULTIPLE, MULTI-PARTY OR SINGLE CONTRACT

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Particular Contractual Forms

CONSENT/COMPROMISE/CONSENT DECREE

See CIVIL SUIT

See also PRACTICE AND PROCEDURE

CONSTITUTIONAL INTERPRETATION

1. AIDS TO CONSTRUCTION

(a) External aids

(1) Dictionaries, Lexicon or Dictionary Meaning

See CONSTITUTION OF INDIA, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

(2) Mores, Beliefs/Faith of People

[301] — **Relevance** — *Constitution of India, Preamble, Pt. III and Arts. 14, 21, 15, 44 and 32. Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1: (2014) 2 SCC (Cri) 225: (2014) 2 SCC (Civ) 417: AIR 2014 SC 1281: (2014) 4 Mah LJ 933: (2014) 2 KLT 444: (2014) 3 MPLJ 343.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 19-2-2014]

Manuel Theodore D'Souza, In re, (2000) 3 Bom CR 244; Philips Alfred Malvin v. Y.J. Gonsalvis, AIR 1999 Ker 187, distinguished and limited

2. BASIC RULES OF INTERPRETATION

Temporally concordant interpretation

See CONSTITUTION OF INDIA, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

CONSTITUTIONAL LAW

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1. GENERALLY

— Primacy of Human Rights over any religious doctrine *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

2. BASIC FEATURES OR STRUCTURE OF THE CONSTITUTION

— Primacy of Human Rights over any religious doctrine *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

3. COMMON LAW

See PROPERTY LAW — 'Common law principles', (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

4. CONSTITUTIONAL/PUBLIC LAW TORTS

See (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

5. EMINENT DOMAIN

— Invocation of S. 17 of 1894 Act to benefit private persons — Approach of Court *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 17 and 5-A, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776

6. GRANT AND SEPARATION OF POWERS

(a) Each power vis-à-vis the other power(s)

(1) Executive vis-à-vis Courts

See CONSTITUTION OF INDIA, Arts. 32, 226, 136, 129, 144 and Arts. 73, 74, 162 and 163, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 131 and 144, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also PRACTICE AND PROCEDURE — 'State as a litigant/party', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(2) Legislature vis-à-vis Courts

See CONSTITUTION OF INDIA, Arts. 13, 32, 129, 136, 226, 144, 245 and 246, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(b) Judicial power

— Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Religious courts — Dar-ul-Qazas/Nizam-e-Qazas — Establishment of such courts to administer justice to members of particular religion — Impermissibility *See* 'Sovereignty/Sovereign functions', (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

(c) Primacy of Constitution

See CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

7. RULE OF LAW

See CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Arts. 129, 142 and 144, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

8. SOVEREIGNTY/SOVEREIGN FUNCTIONS

[302] **— Establishment of courts — Religious courts — Dar-ul-Qazas/Nizam-e-Qazas — Establishment of such courts to administer justice to members of particular religion — Impermissibility** — *Recognising that object of establishment of such courts (in present case, Muslim courts), may be laudable, held, such "courts" have no legal status — They are not part of* **corpus juris** *of the State — Constitution of India, Arts. 124, 214, 215, 233 and Art. 245 r/w Sch. VII Entry List II 65 & List III Entry 46. Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

— Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

CONSTITUTIONAL/PUBLIC LAW TORTS

See CONSTITUTIONAL LAW

CONSTITUTIONAL/PUBLIC LAW TORTS/PUBLIC SAFETY/BODILY INTEGRITY

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Narrowly construed

CONSTITUTIONAL TORTS/PUBLIC LAW/ACCIDENTS

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

See also TORT LAW

CONSTRUCTION AND BUILDING

See CONTRACT AND SPECIFIC RELIEF — 'Specific Contracts'

CONSTRUCTION OF INSURANCE CONTRACTS/INTERPRETATION OF POLICY

See INSURANCE

CONSTRUCTION OF WORDS AND PHRASES

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents'

CONSTRUCTION/INTERPRETATION OF CONTRACT

See CONTRACT AND SPECIFIC RELIEF

CONSTRUCTION/INTERPRETATION OF DEEDS AND DOCUMENTS

See DEEDS AND DOCUMENTS

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1. GENERALLY

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See also DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

— Nature and Scope *See* 'Consumer Protection Act, 1986', (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586

2. CONSUMER FORUMS

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(a) Appeal

— Conditional stay *See* 'Consumer Protection Act, 1986', S. 19 second proviso, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598

(b) Appeal/Interference by Supreme Court

See 'Consumer Forums' — Exercise of power — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also CONSTITUTION OF INDIA, Art. 142, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370

(c) Exercise of power

(1) Generally

[303] — Limits — Exercise of jurisdiction after remand — National Commission (NC) cannot go beyond findings of remand authority i.e. Supreme Court in present case — *Death of US based woman due to medical negligence — Supreme Court earlier in* Malay Kumar Ganguly, *(2009) 9 SCC 221 had found doctors/Hospital negligent and absolved claimant (deceased's husband) of charges of contributory negligence — Matter was then remanded to NC only for determining quantum of compensation — NC determined compensation but deducted 10% on account of contributory negligence of claimant holding that he had interfered with treatment of deceased — Order set aside being contrary to findings of Supreme Court in* Malay Kumar Ganguly case — *Consumer Protection Act, 1986, Ss. 23, 22, 18 and 14 — CPC, 1908, Or. 41 Rr. 23-A and 23. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

(2) Compensation

[304] — Deficiency in service alleged against University — Rs 50,000 awarded as compensation — Sustainability of — Respondent passed MSc (Mathematics) from appellant University, applying for issuance of provisional certificate — Appellant University allegedly not issuing the same — Contention of deficiency in service — *District Forum passing ex parte order in favour of respondent with compensation of Rs 50,000 and same confirmed in appeal and revision — Validity of — Held, respondent had been appointed as teacher in Mathematics in another Institute — Such appointment could not have been possible without production of evidence to show that respondent had completed his postgraduation — Contention of appellant that respondent had applied for duplicate passing certificate appeared plausible — Hence, award of compensation set aside — Consumer Protection Act, 1986, Ss. 2(1)(g) and 21* (Para 5). *Ranchi University* v. *Sneh Kumar*, (2011) 15 SCC 212: (2014) 2 SCC (Civ) 357: AIR 2011 SC 1824: (2011) 112 Cut LT 599: (2012) 1 CPJ 29.

Bench Strength **2**. Coram: *G.S. Singhvi* and *A.K. Ganguly*, JJ. [Date of decision: 8-4-2011]

(3) Execution

See CONSTITUTION OF INDIA, Art. 142, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370

(4) Interim orders

See 'Consumer Protection Act, 1986', S. 19 second proviso, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598

(5) Natural Justice/Reasons/Application of mind

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(6) Relief/Compensation/Interest

— Compensation — Quantum — Determination *See also* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Compensation — Quantum — Determination — Medical negligence — Duty to award just and reasonable compensation *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **Interest** *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

(d) Jurisdiction and Powers of Consumer Forum

[305] — Concurrent jurisdiction — Alternative remedy of Departmental appeal already availed — Maintainability of consumer complaint thereafter — *On facts, appeal filed by appellant against the demand of the extension fee by Housing Development Authority had already been rejected by the Administrator — Held, National Commission clearly in error in dismissing revision only on ground that another appeal was pending before Administrator — State Commission also committed error by non-suiting appellant on ground that he had already availed the remedy of appeal — Dismissal of departmental appeal could hardly be pressed into service by the respondent for facilitating rejection of the appellant's complaint against the levy of excess extension fee and delayed delivery of possession of the plot and that too of a similar size — Impugned order as also the order passed by State Commission are set aside and matter remitted to the State Commission for disposal of the appeal on merits — Consumer Protection Act, 1986, Ss. 12, 17 and 21* (Paras 8 and 10)

The complainant can also avail departmental remedy by filing an appeal. Once the appeal is decided and the consumer is aggrieved by the decision of the appellate authority then he can challenge the action/decision of the initial authority as well as the appellate authority by filing a complaint. If the complaint is time-barred, the consumer can seek condonation of delay by filing an application under Section 24-A(2) (Para 8). *Dhanbir Singh* v. *HUDA*, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586: (2012) 3 CPJ 1.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 14-10-2011]

[**Ed.**: *See* in this regard the decision in *HUDA* v. *Satish Hans*, (2009) 7 SCC 282.]

(e) Maintainability

— **Delay/Laches/Limitation** *See* 'Consumer Protection Act, 1986', Ss. 24-A and 12, (2013) 14 SCC 758: (2014) 3 SCC (Civ) 528

(f) Practice and Procedure

— **Other Matters** *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

3. CONSUMER PROTECTION ACT, 1986

[306] — Generally — Objective of — *Held, the Consumer Protection Act was enacted to provide for better protection of the interests of consumers and for establishment of Consumer Forums and other authorities for the settlement of consumer disputes and for matters connected therewith* (Para 8). *Dhanbir Singh* v. *HUDA*, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586: (2012) 3 CPJ 1.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 14-10-2011]

— **S. 2(1)(g)** *See* S. 2(1)(o); S. 14

— **Ss. 2(1)(g), 12, 15, 19 and 23** *See* 'Services' — Banking and other financial services, (2011) 15 SCC 113: (2014) 2 SCC (Civ) 256

— **Ss. 2(1)(g) and 21** *See* 'Consumer Forums' — Exercise of power — Compensation, (2011) 15 SCC 212: (2014) 2 SCC (Civ) 357

— **S. 2(1)(o)** *See* S. 14

— **Ss. 2(1)(o) & (g)** *See* 'Services' — Medical practitioners/services, (2014) 12 SCC 206: (2014) 5 SCC (Civ) 88

See also CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

See also (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

See also INSURANCE — 'Motor insurance', (2014) 9 SCC 324: (2014) 5 SCC (Civ) 43

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 15, 147 and 149, (2013) 11 SCC 424: (2014) 1 SCC (Civ) 562

[307] — Ss. 3 and 24-A — Maintainability of complaints after availing statutory remedies — *Held, S. 3 declares that the provisions contained in the Act are in addition to and not in derogation of the provisions of any other law for the time being in force — There is thus no provision in the Act which bars filing of a complaint by a consumer after availing other statutory remedies*

The complainant can also avail departmental remedy by filing an appeal. Once the appeal is decided and the consumer is aggrieved by the decision of the appellate authority then he can challenge the action/decision of the initial authority as well as the appellate authority by filing a complaint. If the complaint is time-barred, the consumer can seek condonation of delay by filing an application under Section 24-A(2) (Para 8)

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 14-10-2011]

[**Ed.**: *See* in this regard the decision in *HUDA* v. *Satish Hans*, (2009) 7 SCC 282.]. *Dhanbir Singh* v. *HUDA*, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586: (2012) 3 CPJ 1.

— **S. 12** *See also* S. 2(1)(g); S. 24-A

— **Ss. 12, 13, 14, 18, 22 and 23** *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **Ss. 12, 17 and 21** *See* 'Consumer Forums' — Jurisdiction and Powers of Consumer Forum, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586

See also 'Services' — Housing, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586

— **Ss. 12 and 25(a) (as it was prior to amendment)** *See* CONSTITUTION OF INDIA, Art. 142, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370

— **S. 13** *See* S. 12

— **S. 14** *See also* S. 12; S. 23

— **Ss. 14 and 2(1)(o) & (g)** *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **Ss. 14, 18 and 22** *See* 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **S. 15** *See* S. 2(1)(g)

— **S. 17** *See* S. 12

— **S. 18** *See* S. 12; S. 14; S. 23

— **S. 19** *See also* S. 2(1)(g)

[308] — S. 19 second proviso — Pre-deposit required under, for an appeal to be entertained by National Commission — Object and nature thereof — *Pre-deposit amount specified therein i.e. 50% of amount awarded by State Commission or Rs 35,000, whichever is less — Adherence to — Obligation of National Commission in respect of, while passing conditional interim order in favour of appellant subject to certain deposit to be made by him — Interim order directing deposit in excess of amount specified under S. 19 second proviso of CP Act — Validity — Held, pre-deposit under S. 19 second proviso of CP Act is mandatory for entertainment of an appeal by National Commission — Object of said pre-deposit condition is to avoid frivolous appeals — However, said pre-deposit condition has no nexus with grant of interim order of stay — Stages of entertainment of an appeal and grant of interim order therein, distinguished in this regard — Thus, where National Commission granted interim stay order in favour of appellants subject to condition that they would deposit 50% of amount awarded by State Commission, contention of appellants that said order was contrary to S. 19 second proviso of CP Act as National Commission could not direct such deposit exceeding the amount specified in said provision, held, not sustainable — Hence, rejected — CPC, 1908, Or. 41 R. 5 and Or. 39 R. 1* (Paras 7 and 9 to 11). *Shreenath Corpn.* v. *Consumer Education & Research Society*, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598: (2014) 4 MPLJ 444: (2014) 106 ALR 703: (2014) 142 AIC 251: (2014) 3 CPJ 1: (2014) 6 Mah LJ 526: (2014) 1 CPR 1.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *V. Gopala Gowda*, JJ. [Date of decision: 7-7-2014]

Shreenath Corpn. v. Consumer Education & Research Society, First Appeal No. 95 of 2012, order dated 15-5-2012 (NC), affirmed

— **S. 21** *See* S. 2(1)(g); S. 12

— **S. 22** *See also* S. 12; S. 14; S. 23

[309] — Ss. 22 and 23 — Appeal — Opportunity of hearing — Necessity of — *Temporary injunction granted by State Commission — Appeal against injunction — Appeals fixed only for directions and not for final disposal — National Commission dismissed the appeals without hearing the appellant — Impugned order, held, is liable to be set aside — Matter remitted to National Commission for disposal in accordance with law after giving opportunity of hearing. Shiv Sai Construction* v. *Libord Infotech Ltd.*, (2013) 14 SCC 610: (2014) 5 SCC (Civ) 439.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 9-2-2009]

— **S. 23** *See also* S. 2(1)(g); S. 12; S. 22

— **Ss. 23, 22, 18 and 14** *See* 'Consumer Forums' — Exercise of power — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **S. 24-A** *See also* S. 3

[310] — Ss. 24-A and 12 — Statutory period of limitation in filing complaint — Strict compliance with, unless sufficient cause shown — Necessity — *Factum that most of the Consumer Forums were entertaining complaints without adverting to issue of limitation, overburdening Consumer Forums and consequently delaying disposal of other deserving cases, strongly deprecated — On facts held, non-consideration of appellant's plea of limitation by the three Consumer Forums that the complaint was filed by respondent after almost six years of cancellation of allotment, in absence of any prayer for condonation of delay, resulted in miscarriage justice — Impugned order set aside* (Paras 11 to 13). *HUDA* v. *Tej Refrigeration Industries Ltd.*, (2013) 14 SCC 758: (2014) 3 SCC (Civ) 528.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 16-7-2013]

HUDA v. Tej Refrigeration Industries Ltd., SLP (C) CC No. 7356 of 2013, order dated 10-4-2013 (SC), confirmed

HUDA v. Tej Refrigeration Industries, Revision Petition No. 4336 of 2010, decided on 3-9-2012 (NC), reversed

— **S. 25(a)** *See* S. 12

4. CONSUMER PROTECTION RULES, 1987

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5. SERVICES

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(a) Banking and other Financial Services

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business — Banking services/ Customer service/Negligence, (2014) 3 SCC 595: (2014) 2 SCC (Civ) 308

[311] — Banking service — Deficiency in service — Bank staff misappropriating and embezzling customer's money — Respondent complainant demanding return of deposited money and damages from appellant Bank on ground of vicarious liability — *Appellant Bank refusing payment of money for tortious acts of its officials and contended that respondent complainant had already withdrawn the deposited amount — All fora below concurrently holding that appellant Bank was responsible for tortious activities of its staff and liable to reimburse amount to respondent complainant — Interference with — Held, concurrent findings recorded by Consumer Fora did not suffer from any infirmity — Appellant Bank did not produce any evidence to establish that respondent complainant had, in fact, withdrawn amount deposited by him even in the absence of corresponding entries in passbooks — Appellant Bank vicariously liable for wrongdoings of its staff resulting in monetary loss to respondent complainant — No evidence was produced to show that respondent complainant manipulated entries in passbook — Hence no ground made out for interference — Consumer Protection Act, 1986, Ss. 2(1)(g), 12, 15, 19 and 23* (Paras 8 and 9). *Haryana Gramin Bank* v. *Madan Lal*, (2011) 15 SCC 113: (2014) 2 SCC (Civ) 256.

Bench Strength **2**. Coram: *G.S. Singhvi* and *A.K. Ganguly*, JJ. [Date of decision: 31-1-2011]

SBI v. Shyama Devi, (1978) 3 SCC 399; Bank of India v. Deepak Jaiswal, (2002) 1 CPC 579; Allahabad Bank v. Shiv Swarup Srivastav, (2007) 1 CPC 296, cited

(b) Educational Services

— Issuance of formal documents to students — Deficiency in service alleged *See* 'Consumer Forums' — Exercise of power — Compensation, (2011) 15 SCC 212: (2014) 2 SCC (Civ) 357

(c) Housing

See 'Consumer Forums' — Jurisdiction and Powers of Consumer Forum, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586

See also 'Consumer Protection Act, 1986', Ss. 3 and 24-A, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586

See also CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Contractual matters (including government contracts and auctions), Art. 226, (2011) 15 SCC 517: (2014) 2 SCC (Civ) 631

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— Ss. 55(1)(f) and 108(b), (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

[312] — Allotment of flats — After deposit of total cost of flats — Allotment letters clearly mentioned that possession of flats will be handed over within 13 months — District Forum after two years directing handing over of possession or refund with interest and penalties allowing complaint — *Held, appeal against order in revision petitions filed by petitioners dismissed with costs by National Commission cannot but be termed as frivolous piece of litigation — Finding recorded by District Forum that there was deficiency in service on petitioners' part based on correct analysis of facts and documents produced by parties and State Commission rightly refused to interfere — Direction by District Forum for refund of amount deposited by respondents was also correct and State Commission and National Commission did not commit any error by approving it — National Commission has been more than lenient in imposing small amount of costs of Rs 50,000 while dismissing revision filed in execution matters — Petitioner developers directed to pay entire amount due to respondents within one month and submit a report within next two weeks — On failure to comply Registry shall list the cases before Supreme Court — Constitution of India, Art. 136. Shivalik Vihar Sites (P) Ltd.* v. *Darshan Singh*, (2012) 13 SCC 694: (2014) 5 SCC (Civ) 409.

Bench Strength **2**. Coram: *G.S. Singhvi* and *Gyan Sudha Misra*, JJ. [Date of decision: 10-12-2012]

Shivalik Vihar Sites (P) Ltd. v. Darshan Singh, Revision Petition No. 1414 of 2012, order dated 9-7-2012 (NC) sub nom Shivalik Vihar Sites (P) Ltd. v. Gurcharan Singh, Revision Petition No. 1413 of 2012, affirmed

[313] — Allotment of plots — Deficiency of service — Remedies for aggrieved persons — *Held, in matters like allotment of plot/land by development authorities and other similar agencies/instrumentalities of the State, whose functioning is governed by law enacted by State Legislature, departmental remedies are usually available to an aggrieved person — If such person falls within the definition of "consumer" under S. 2(d) of the Act then he can directly file a complaint under Ss. 12, 17 and 21, as the case may be — Consumer Protection Act, 1986, Ss. 12, 17 and 21*

The complainant can also avail departmental remedy by filing an appeal. Once the appeal is decided and the consumer is aggrieved by the decision of the appellate authority then he can challenge the action/decision of the initial authority as well as the appellate authority by filing a complaint. If the complaint is time-barred, the consumer can seek condonation of delay by filing an application under Section 24-A(2) (Para 8). *Dhanbir Singh* v. *HUDA*, (2013) 11 SCC 472: (2014) 1 SCC (Civ) 586: (2012) 3 CPJ 1.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 14-10-2011]

[**Ed.**: *See* in this regard the decision in *HUDA* v. *Satish Hans*, (2009) 7 SCC 282.]

— Letter of intent — Non-compliance with terms and conditions — No agreement for sale that can be specifically enforced *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

(d) Insurance

See INSURANCE — 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

— 'Motor insurance', (2014) 9 SCC 324: (2014) 5 SCC (Civ) 43

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 15, 147 and 149, (2013) 11 SCC 424: (2014) 1 SCC (Civ) 562

— Ss. 166, 168 and 171, (2014) 1 SCC 244: (2014) 1 SCC (Civ) 184

— Non-delivery of goods *See* INSURANCE — 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

(e) Medical negligence

— Criminal medical negligence *See* (2013) 10 SCC 741: (2014) 1 SCC (Civ) 124

(f) Medical practitioners/services

— Medical negligence *See also* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

[314] — Medical negligence — Claim for just compensation — Additional (unanticipated) claim — Non-inclusion in original claim through amendment — Held, no ground to reject additional claim — It is the duty of Tribunals, Commissions and Courts including Supreme Court to award just and reasonable compensation even if the same is more than what was originally claimed — *Claim of Rs 77 crores filed in 1998 for medical negligence before National Commission (NC) — Additional claim of Rs 20 crores made in 2011 — Rejection of such additional claim by NC without consideration simply on ground that the same was not pleaded earlier or included in pleadings by way of amendment, held, not justified — Additional damages/losses suffered by claimant during these years could not have been anticipated with original claim in 1998 — Additional claim considered by Supreme Court for determining just compensation — On facts, total compensation of Rs 6 crores awarded — CPC, 1908, Or. 2 R. 2 — Consumer Protection Rules, 1987, R. 14(1)(e) — Constitution of India, Art. 136 — Consumer Protection Act, 1986, Ss. 12, 13, 14, 18, 22 and 23*

The claimant in 1999 filed a petition before the National Consumer Disputes Redressal Commission (National Commission) alleging medical negligence on the part of the appellant doctors (Dr *M*, *H* and *P*) and the appellant Hospital and claimed compensation of Rs 77 crores. The National Commission in 2006 dismissed this complaint. Aggrieved, the claimant had approached the Supreme Court in appeal. The Supreme Court disposing of that appeal in 2009 vide *Malay Kumar Ganguly*, (2009) 9 SCC 221, found that *A*'s death was caused due to the cumulative effect of giving of treatment contrary to the established medical treatment protocols thereby holding the appellant doctors/Hospital negligent in the treatment of *A*. The matter was then remanded to the National Commission to award just and reasonable compensation to the claimant. Before the National Commission, the claimant filed a revised quantum of claim at Rs 97 crores thereby making addition in original claim (Rs 77 crores) by Rs 20 crores. The National Commission rejected such upgradation of claim as it was not by amending complaint at any stage before the National Commission or the Supreme Court. Therefore, restricting the determination to the original claim of Rs 77 crores, the National Commission fixed a total compensation of

Rs 1.7 crores for the medical negligence. However, the National Commission held that the claimant had also contributed to this negligence by his interference during the treatment and hence deducted 10% from the total compensation, awarding an amount of Rs 1.5 crores to the claimant. (Paras 103.2, 115, 160 and 161)

Therefore, in view of various decisions of the Supreme Court wherein the Court has awarded "just compensation" more than what was claimed by the claimants initially, the contention that the additional claim made by the claimant was rightly not considered by the National Commission for the reason that the same is not supported by pleadings by filing an application to amend the same regarding the quantum of compensation and the same could not have been amended as it is barred by the limitation provided under Section 23 of the Consumer Protection Act, 1986 and the claimant is also not entitled to seek enhanced compensation in view of Order 2 Rule 2 CPC as he had restricted his claim at Rs 77 crores is not sustainable in law. The claimant has appropriately placed reliance upon the decisions of the Supreme Court in justification of his additional claim and the finding of fact on the basis of which the National Commission rejected the claim is based on untenable reasons. It is the duty of the tribunals, commissions and the courts to consider relevant facts and evidence in respect of facts and circumstances of each and every case for awarding just and reasonable compensation. Also, the Supreme Court has got the power under Article 136 of the Constitution and the duty to award just and reasonable compensation to do complete justice to the affected claimant. Therefore, the claimant is justified in claiming additional claim (of Rs 20 crores) for determining just and reasonable compensation under different heads. Hence, the decision of the National Commission in confining the grant of compensation to the original claim of Rs 77 crores preferred by the claimant under different heads and awarding meagre compensation under the different heads in the impugned judgment, is wholly unsustainable in law as the same is contrary to the settled legal principles. (Paras 100, 104 and 115 to 117). *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Ningamma v. United India Insurance Co. Ltd., (2009) 13 SCC 710: (2009) 5 SCC (Civ) 241: (2010) 1 SCC (Cri) 1213; Malay Kumar Ganguly v. Sukumar Mukherjee, (2009) 9 SCC 221: (2009) 3 SCC (Civ) 663: (2010) 2 SCC (Cri) 299; Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka, (2009) 6 SCC 1: (2009) 2 SCC (Civ) 688; Oriental Insurance Co. Ltd. v. Jashuben, (2008) 4 SCC 162: (2008) 2 SCC (Cri) 752; R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551: 1995 SCC (Cri) 250; Raj Rani v. Oriental Insurance Co. Ltd., (2009) 13 SCC 654: (2009) 5 SCC (Civ) 232: (2010) 1 SCC (Cri) 1171; Laxman v. Oriental Insurance Co. Ltd., (2011) 10 SCC 756: (2012) 3 SCC (Civ) 1095: (2012) 1 SCC (Cri) 108; Ibrahim v. Raju, (2011) 10 SCC 634: (2012) 3 SCC (Civ) 1053: (2012) 1 SCC (Cri) 120, followed

Mason's Law and Medical Ethics, 4th Edn., cited

[**Ed.**: The above background facts are taken from *Malay Kumar Ganguly*, (2009) 9 SCC 221.]

[315] — Medical negligence — Compensation — Apportionment of liability between Hospital and doctors — Hospital, held, vicariously liable for conduct of its doctors — Hence, liable to pay entire compensation minus compensation payable by each doctor to extent of his/her liability — *Treatment of patient contrary to established medical protocols resulting in death — Patient (US resident) suffering from Toxic Epidermal Necrolysis (TEN), a skin disease — Dr* **M** *failed to diagnose the disease at initial stage and prescribed high dose of medicine (steroid) — Dr* **H** *though diagnosed TEN and stopped use of medicine prescribed by Dr* **M** *but administered to patient another steroid without considering harmful effect of earlier steroid already accumulated in patient's body — Dr* **P** *though a junior doctor stood as second fiddle who did not apply his own mind — All three doctors thus found guilty of medical negligence — Compensation of Rs 6 crores for medical negligence awarded to husband of deceased patient — Dr* **M** *and* **H**, *both senior doctors, maligned their profession firstly by the way they treated deceased patient and secondly on being charged, by shifting blame onto other doctors — Both, held, liable to pay Rs 10 lakhs each — However, Dr* **P** *being a junior doctor whose contribution to negligence is less than senior doctors, held, liable to pay Rs 5 lakhs — Balance compensation of Rs 5.8 crores, held, payable by Hospital with interest @ 6% p.a. from date of complaint (1998) till its payment. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Savita Garg v. National Heart Institute, (2004) 8 SCC 56, followed

Alan Merry and Alexander McCall Smith: Errors, Medicine and the Law, 2001 Edn., Cambridge University Press, p. 12., cited

Kunal Saha v. Sukumar Mukherjee, Original Petition No. 240 of 1999, order dated 21-10-2011 (NC), partly reversed and partly affirmed

Alan Merry and Alexander McCall Smith: Errors, Medicine and the Law, 2001 Edn., Cambridge University Press, p. 14, cited

[**Ed.**: For the ease of study, the award of the Supreme Court under different heads of claim with the corresponding amounts as claimed by the claimant and award of the National Commission on that, is given in the tabular format in (2014) 1 SCC 384 at pp. 399 et seq.]

[316] — Medical negligence — Compensation — Interest on compensation — Held, has to be awarded from date of filing complaint up to date of payment of compensation — *Death of US based woman, a child Psychologist in 1998 — Claim for compensation for Rs 97 crores remained pending for 15 yrs — National Commission (NC) while awarding compensation (Rs 1.5 crores) granted no interest for this long period when case was pending — Held, unjustified — Supreme Court while enhancing compensation to Rs 6 crores awarded interest @ 6% p.a. from date of complaint till date of payment of such compensation — Interest Act, 1978, S. 3 — Consumer Protection Act, 1986, Ss. 14, 18 and 22 — CPC, 1908, S. 34. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Thazhathe Purayil Sarabi v. Union of India, (2009) 7 SCC 372: (2009) 3 SCC (Civ) 133: (2009) 3 SCC (Cri) 408, followed

[**Ed.**: The appellant Hospital is directed to pay compensation with interest @ 6% per annum from the date of the complaint till the date of the payment to the claimant. The compensation as payable by the appellant Hospital after such interest (taking period of 15 years) would be approximately Rs 11 crores.]

[317] — Medical negligence — Compensation — Loss of income of deceased — Determination — Multiplier method — Non-applicability in medical negligence cases — *Held, Supreme Court is sceptical about using a straitjacket multiplier method for determining quantum of compensation in medical negligence claims — On facts, such method not adopted — Compensation determined by multiplying estimated annual loss of income of deceased aged 36 yrs with expected years of working life i.e. 30 yrs in present case — Motor Vehicles Act, 1988, S. 163-A r/w Sch. II — Consumer Protection Act, 1986, Ss. 14 and 2(1)(o) & (g). Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[318] — Medical negligence — Compensation — Loss of income of deceased — Determination/calculation — Relevant factors to be taken into consideration — Determination of income has to be only on basis of evidence on record — Additions/subtractions/multiplications to be made — Non-applicability of multiplier method — On facts, such loss of income computed at Rs 5.7 crores and awarded as compensation accordingly — Held, status, future prospects and educational qualifications of deceased must be considered — *Estimate of income given by foreign expert (deceased being a foreign resident), cannot be taken as income of deceased — Evidence on record alone has to be relied upon to determine such income — Appropriate addition towards future loss of income also to be made along with deduction for personal expenses of deceased — Total loss of income is then to be determined by multiplying annual loss with expected years of life deceased would have worked — Death of 36 yr old US based NRI woman due to medical negligence of doctors in India — Deceased was graduate in Psychology from highly prestigious institution in New York — US economist examined by claimant via video conferencing gave estimate of her income which she could have earned in future at US $5.125 million — Such estimate not considered — Evidence on record showing deceased's earnings of $30,000 p.a. as graduate student — As earnings were not from regular source of income, earnings of deceased on regular job taken at $40,000 — Addition of 30% made towards future loss of income (i.e. $12,000) — Further deduction of 1/3rd made towards personal expenditure of deceased (i.e. $17,333) — Estimating life expectancy of healthy person as 70 yrs, total loss of income determined by multiplying net annual loss ($34,667) with 30 (assuming she would have worked till age of 66) — Taking current value of Indian rupee at Rs 55 per $1, total loss of income of deceased in Indian rupees computed at Rs 5.7 crores — Evidence Act, 1872, S. 45 — Consumer Protection Act, 1986, Ss. 14 and 2(1)(o) & (g). Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254: (2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258; Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; Malay Kumar Ganguly v. Sukumar Mukherjee, (2009) 9 SCC 221: (2009) 3 SCC (Civ) 663: (2010) 2 SCC (Cri) 299; R.K. Malik v. Kiran Pal, (2009) 14 SCC 1: (2009) 5 SCC (Civ) 265: (2010) 1 SCC (Cri) 1265; Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167, followed

Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683: (2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82: (2012) 1 SCC (L&S) 422; Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236: (2012) 3 SCC (Civ) 452: (2012) 1 SCC (Cri) 825; Ibrahim v. Raju, (2011) 10 SCC 634: (2012) 3 SCC (Civ) 1053: (2012) 1 SCC (Cri) 120; Laxman v. Oriental Insurance Co. Ltd., (2011) 10 SCC 756: (2012) 3 SCC (Civ) 1095: (2012) 1 SCC (Cri) 108; Kavita v. Dipak, (2012) 8 SCC 604: (2012) 4 SCC (Civ) 558: (2012) 3 SCC (Cri) 997: (2012) 2 SCC (L&S) 711, distinguished

[**Ed.**: The above background facts are taken from *Malay Kumar Ganguly*, (2009) 9 SCC 221.]

*[**Ed.**: This was permitted vide *Kunal Saha* v. *Sukumar Mukherjee*, (2011) 13 SCC 98.]

[**Ed.**: For the ease of study, the award of the Supreme Court under different heads of claim with the corresponding amounts as claimed by the claimant and award of the National Commission on that, is given in the tabular format in (2014) 1 SCC 384 at pp. 399 et seq.]

[319] — Medical negligence — Compensation — Non-pecuniary damages — Loss of consortium — Death of claimant's wife aged 36 yrs due to negligence of doctors — Sum of Rs 1 lakh awarded towards loss of consortium as against claim of Rs 13.5 crores (Para 182). *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[320] — Medical negligence — Compensation — Non-pecuniary damages — Pain and suffering of victim during treatment — *Award of, of more than conventional amount as set by Supreme Court in earlier cases cannot be made — On facts, claim of Rs 4.5 crores for pain and suffering endured by deceased during her treatment, held excessive — Sum of Rs 10 lakhs awarded on this count — Constitution of India, Arts. 141 and 142. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Arun Kumar Agrawal v. National Insurance Co. Ltd., (2010) 9 SCC 218: (2010) 3 SCC (Civ) 664: (2010) 3 SCC (Cri) 1313; Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149; Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka, (2009) 6 SCC 1: (2009) 2 SCC (Civ) 688; R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551: 1995 SCC (Cri) 250, followed

[321] — Medical negligence — Compensation — Pecuniary damages — Death of foreign resident in India — Travel expenses of claimant/relatives to attend claim proceedings in India — *Some proof of such expenses is required — On facts, claim of Rs 70 lakhs made by husband for his travel to India from US over the past 12 yrs to attend proceedings filed for compensation for death of his wife due to negligence of appellant doctors/Hospital, rejected — No record of air fare produced — However, considering that claimant husband being resident of US must have incurred some expenses to come to India to attend proceedings, amount of Rs 10 lakhs awarded for such travel expenses. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[322] — Medical negligence — Compensation — Pecuniary damages — Death of US resident due to medical negligence of doctors in India — Compensation claim by husband — Claim for loss of US Social Security Income up to 82 yrs (Rs 1.4 crores) and expenses for videoconferencing from US (Rs 11.5 lakhs) — Not considered/discussed by Supreme Court. *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[323] — Medical negligence — Compensation — Pecuniary damages — Legal expenses — Claimant himself appearing and arguing his case — Consideration of, while awarding damages under this head — *Medical negligence case filed by husband (claimant) for death of his wife — Both foreign residents — Claimant, a doctor by profession appeared in person to argue his case though he might have required assistance of lawyers to prepare his case and produce evidence in order — Claim for Rs 1.65 crores towards litigation expenses over the past 12 yrs, held on higher side — Compensation of Rs 1.5 lakhs appropriate under this head. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

***Followed in** Syed Sadiq v. United India Insurance Co. Ltd., (2014) 2 SCC 735 at p. 744*

***Applied in** Sanjay Kumar v. Ashok Kumar, (2014) 5 SCC 330 at p. 337*

[324] — Medical negligence — Compensation — Pecuniary damages — Medical expenses incurred for treatment of deceased patient — Enhancement — *Death of foreign resident due to medical negligence of doctors in India — Treatment of deceased at two hospitals for which claim of Rs 12 lakhs made — Medical bill of only Rs 2.5 lakhs pertaining to one hospital on record — National Commission quantified expenses at Rs 5 lakhs — Award insufficient — Deceased remained*

as in-patient at the other hospital for about a week — Compensation under this head enhanced to Rs 7 lakhs. Balram Prasad v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[325] — Medical negligence — Compensation — Pecuniary damages — Travel and hotel expenses incurred to obtain alternative medical treatment — Enhancement — *Wife (deceased patient) of claimant admitted to Kolkata hospital on account of medical emergency — Wrong medication worsened her condition and claimant shifted her to Mumbai Hospital where she eventually died — While claiming compensation on account of death of claimant's wife due to negligence of Kolkata doctors, claim made for Rs 9 lakhs as cost of chartered flight to Mumbai and Rs 7 lakhs for travel and stay for 11 days in Mumbai — No bill for such travel and stay produced — However, considering that claimant had to incur some unavoidable expenditure during such travel and stay, compensation of Rs 1 lakh under this head as awarded by National Commission (NC) enhanced to Rs 1.5 lakhs — Further, in absence of any evidence, cost of chartered flight at Rs 5 lakhs as computed by NC, not interfered with. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[326] — Medical negligence — Compensation — Pecuniary/Non-pecuniary damages — Causality — Claims should have direct nexus with negligence of doctors — *Death of US based NRI woman due to medical negligence of doctors in India — Compensation claim by NRI husband also resident of US filed in India — Claim of Rs 1.12 crores for husband's loss of income for missed work in US, cannot be allowed — Also, claim of Rs 13.5 crores for emotional distress, pain and suffering of claimant husband himself, cannot be allowed — No direct nexus of such claims/losses with negligence of doctors/hospital* (Paras 127 and 181). *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

[327] — Medical negligence — Compensation — Quantum — Determination — Relevant factors — Inflation of money — Exchange rate of currency — Date on which to be reckoned — Date of award in appeal — *Held, inflation should be considered while deciding quantum of compensation — Medical negligence claim of Rs 77 crores filed in 1998 remained pending for 15 yrs — Devaluation of money in these years to great extent — Claim of Rs 77 crores in 1998 equivalent to Rs 188.6 crores in 2013 as per Cost Inflation Index (CII) — Hence, enhanced claim by claimant on current value of money is maintainable — National Commission rejecting claim for inflation, without assigning any reason, not justified — Furthermore, as deceased was a foreign resident who had contracted illness and died in India, and her income was in US dollars, current exchange rate (as on date of Supreme Court judgment) applied to compute loss of income in INR — Consumer Protection Act, 1986, Ss. 12, 13, 14, 18, 22 and 23. Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422: (2009) 5 SCC (Civ) 143: (2010) 1 SCC (Cri) 1044; Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683: (2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82: (2012) 1 SCC (L&S) 422, followed

[328] — Medical negligence — Compensation — Special damages/Punitive/ Exemplary damages — Death of US resident due to medical negligence of doctors in India — Compensation claim by husband — Claim for special damages (Rs 18 crores) and punitive/exemplary damages (Rs 13.5 crores) — Not considered/discussed by Supreme Court. *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

— Medical negligence — Contributory negligence by patient or his relative/attendant *See* 'Consumer Forums' — Exercise of power — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

[329] — Medical negligence — If made out — Alleged medical negligence by doctor and Hospital while conducting angiography resulting in dissection of aorta and abdominal pain during angiography of appellant having hypertension — *Held, National Commission rightly reversed judgment of State Commission as discharge summary has nothing to show that there was any emergency to treat aortic dissection — There is sufficient material to conclude that complainant was found stable after third day of angiography and till date of discharge on 8-9-1999 — Complainant did not have a serious aorta dissection but was having sub-acute aorta dissection and therefore complain-*

ant was subjected to clinical management and, in fact, her condition became stable without any surgical interference — There is nothing on record which points out that R-2 doctor used any brutal force to push catheter — Conduct of R-2 not found to be below normal standard of a reasonably competent practitioner in his field — Consumer Protection Act, 1986, Ss. 2(1)(o) & (g). Kanta v. *Tagore Heart Care & Research Centre (P) Ltd.*, (2014) 12 SCC 206: (2014) 5 SCC (Civ) 88: AIR 2014 SC 3355: (2014) 106 ALR 271: (2014) 141 AIC 240: (2014) 3 CPJ 3: (2014) 3 CPR 612: (2014) 3 Cal LT 64.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 10-7-2014]

Tagore Heart Care and Research Centre (P) Ltd. v. Kanta, 2011 SCC OnLine NCDRC 256, affirmed

[330] — Medical negligence — Increasing number of medical negligence cases before Consumer Forums, noticed

The number of medical negligence cases against doctors, hospitals and nursing homes in the consumer forum are increasing day by day. The right to health of a citizen is a fundamental right guaranteed under Article 21 of the Constitution of India. All the government hospitals, nursing homes and polyclinics are liable to provide treatment to the best of their capacity to all the patients. The doctors, hospitals, the nursing homes and other connected establishments are to be dealt with strictly if they are found to be negligent with the patients who come to them pawning all their money with the hope to live a better life with dignity. The patients irrespective of their social, cultural and economic background are entitled to be treated with dignity which not only forms their fundamental right but also their human right. The Court therefore hope and trust that this decision would act as a deterrent and a reminder to those doctors, hospitals, nursing homes and other connected establishments who do not take their responsibility seriously. (Paras 183 and 184)

The Central and the State Governments may consider enacting laws wherever there is absence of one for effective functioning of the private hospitals and nursing homes. Since the conduct of doctors is already regulated by the Medical Council of India, an impartial and strict scrutiny from the body is expected. Finally, it is expected that the institutions and individuals providing medical services to the public at large educate and update themselves about any new medical discipline and rare diseases so as to avoid tragedies such as the instant case where a valuable life could have been saved with a little more awareness and wisdom on the part of the doctors and the Hospital. (Para 185).

Balram Prasad v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, followed

— Medical negligence — Liability for omission *See* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

See also WORDS AND PHRASES, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— Medical negligence — Strict action in case of such negligence *See* CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Health and Health care, Right to, Arts. 21 and 14, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Medical negligence involving acts or omissions — When actionable as a civil wrong under Tort of Negligence, and when actionable as a criminal offence under Ss. 336 to 338 or 304-A r/w Ss. 32, 33 & 36 IPC — Explained in detail *See* DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— Proof of medical condition of claimant — Evidence to establish — Computation of compensation under various heads *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2013) 12 SCC 455: (2014) 1 SCC (Civ) 688

CONTEXTUAL MEANING/HOLISTIC CONSTRUCTION/SURROUNDING CIRCUMSTANCES

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Basic rules

CONTINGENT CONTRACTS

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Particular Contractual Forms

CONTRA PROFERENTEM

See DOCTRINES AND MAXIMS

CONTRACT ACT, 1872

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CONTRACT AND SPECIFIC RELIEF

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1. CONCURRENT OBLIGATIONS

— Tort of negligence — Occupier's liability — Concurrent/Additional contractual or statutory duties of care *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Tort of negligence — Standard of care when contractual relationship for consideration exists — Occupier's liability when persons enter premises concerned for contractual consideration *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

2. CONSTRUCTION/INTERPRETATION OF CONTRACT

See GOVERNMENT CONTRACTS/TENDERS — 'Interpretation of contractual terms', (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455

See also INSURANCE — 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

[331] — Doctrine of contra proferentem — Application of — Held, it does not apply in case of commercial contract since clauses of the contract are bilateral and mutually agreed upon in commercial contract — *Insurance Act, 1938, S. 46. Export Credit Guarantee Corpn. of India Ltd.* v. *Garg Sons International*, (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648: (2013) 178 Comp Cas 341: (2013) 116 Cut LT 395: (2013) 97 ALR 195: (2013) 123 AIC 268: (2013) 2 CPJ 1.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *V. Gopala Gowda*, JJ. [Date of decision: 17-1-2013]

Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567: (2010) 4 SCC (Civ) 267; Vikram Greentech (I) Ltd. v. New India Assurance Co. Ltd., (2009) 5 SCC 599: (2009) 2 SCC (Civ) 590; Sikka Papers Ltd. v. National Insurance Co. Ltd., (2009) 7 SCC 777: (2009) 3 SCC (Civ) 304; Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451; Polymat India (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174; Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (2010) 11 SCC 296: (2010) 4 SCC (Civ) 459; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306, followed

— Power to supply obvious omission in arbitration clause — Invocation of — When justified — Officious bystander and reasonable business person principles — Applicability *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45, 44, 5, 7, 10, 11 and 8 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

3. CONTRACTUAL OBLIGATIONS AND RIGHTS

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(a) Accrual of Contractual Obligation

[332] — Letter of intent — On facts, held, was not a complete agreement — Letter of intent containing certain terms and conditions with a stipulation that only fulfilment of said terms entitle parties to enter into agreement — Thus, held, said letter of intent is not even an agreement to sell/contract for sale (CFS) — Hence, held, no right for specific performance of contract accrues merely based on said letter of intent — *Letters of intent issued in favour of appellant-plaintiffs by Respondent 2 developer of a property for reserving flats and registering on their names after payment of entire purchase price in monthly instalments — Accordingly, developer reserved flats for each appellant-plaintiff subject to terms and conditions incorporated in letter of intent, which also provided that delayed payment of instalment would attract interest of 21% p.a. and if two or more instalments remained unpaid, reservation of flat would stand cancelled — After paying certain instalments appellant-plaintiffs stopped paying instalments objecting to increase of amount of instalment by developer — Consequently, developer cancelled flats reserved in their favour and sold them to respondent subsequent buyers — Trial court decreed suit for specific performance in favour of appellant-plaintiffs — However, in appeal by respondent subsequent buyers, High Court set aside said decree and directed developer to refund amount paid by appellant-plaintiffs with interest at 9% from date of letter of termination — Sustainability — Held, as appellants-plaintiffs had not entered into any formal agreement for purchase of flats with developer, mere letter of intent, which was subject to several conditions, would not give any right for purchase of the flats — Conditions incorporated in letter of intent imposed a duty on intended purchasers to make payment of all instalments payable in respect of purchase price of flat — Further, it was open to developer to vary price or*

area to be covered by a flat in certain cases — In instant case, developer had raised the price due to escalated cost of construction because of delay on account of litigation, which was approved and paid by majority of intended purchasers except appellant-plaintiffs — Further, according to S. 4(1) of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, agreement executed between purchasers and developer ought to be registered — In absence of such registered document, plaintiffs would not get any right in respect of flats, which they intended to purchase — Hence, held, no error in order of High Court rejecting specific performance of contract — However, direction to refund amount paid by appellant-plaintiffs with interest by enhancing rate of interest to 12%, affirmed — Contract Act, 1872, Ss. 2(b) and 8 — Maharashtra Ownership of Flats (Regulation of Construction, Sale, Management and Transfer) Act, 1963 (45 of 1963), S. 4(1 — Transfer of Property Act, 1882, Ss. 54 and 40 Paras 2 and 3 — Consumer Protection Act, 1986, Ss. 2(1)(o) & (g)

Dismissing the appeals,

Held :

It is not in dispute that the letter of intent was issued by the developer to the plaintiffs wherein certain conditions had been incorporated and upon fulfilment of those conditions, agreements for sale of the flats were to be executed. Upon perusal of the letter of intent closely, one would find that certain conditions had been incorporated in the letter of intent. The said conditions clearly imposed a duty on the part of the intended purchasers to make payment of all the instalments payable in respect of the purchase price of the flat. It is also not in dispute that it was open to the developer to vary the price or the area to be covered by a flat in certain cases. It is not in dispute that the developer had raised the price because of the delay caused on account of the litigation faced by the Society. On account of the delay caused in construction of the flats, the cost had gone up and therefore, the developer had asked for a rise in the price which was approved by the majority of the intended purchasers of the flats. Accordingly, all the other purchasers had started paying the increased price of instalments but the plaintiffs had refused to the same and in fact they had stopped paying the instalments which were becoming due and payable after the price had been increased. It is also worth noticing that the plaintiffs did not make payment even as per the rate prescribed under the letter of intent and the terms and conditions agreed upon by them with the developer. (Para 18)

It is a fact that the plaintiffs had not entered into any formal agreement with regard to the purchase of the flats with the developer. The mere letter of intent, which was subject to several conditions, would not give any right to the plaintiffs for purchase of the flats in question till all the conditions incorporated in the letter of intent were fulfilled by the plaintiffs i.e. the proposed purchasers. It is also a fact that all the conditions, which were to be fulfilled, had not been fulfilled by the plaintiffs. (Para 19)

Further, according to the Section 4(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the agreement executed between the plaintiffs and the developer, ought to have been registered with the Sub-Registrar. In absence of such a registered document, the plaintiffs would not get any right in respect of the flats, which they intended to purchase. Moreover, in absence of the registration, the subsequent buyers could not have got an opportunity to inspect the agreement and there could not be any presumption that the subsequent buyers knew about the agreement. (Para 20)

The letter of intent cannot be said to be an agreement to sell for the simple reason that according to the contents of the letter of intent, only upon payment of the entire purchase price, the developer and the plaintiffs were to enter into an agreement with regard to sale of the flats. This fact clearly denotes that no agreement to sell had been entered into between the plaintiffs and the developer and in absence of such agreements, there cannot be any right in favour of the plaintiffs with regard to specific performance of any contract. Thus, the High Court did not commit any error while coming to the conclusion that there was no binding contract or agreement in existence between the plaintiffs and the developer and therefore, the trial court could not have decreed the suit for specific performance. (Para 21)

As no averment was made by the plaintiffs in their plaints that the subsequent buyers were not bona fide purchasers for consideration, the subsequent buyers could not have adduced any evidence to show that they were bona fide purchasers for consideration. Had such a plea been raised by the plaintiffs in their pleadings, the subsequent buyers could have adduced necessary evidence to prove their cases. In such cases, normally the burden of proof would lie on the plaintiffs unless there is a

registered document so as to raise a presumption that the subsequent buyers had knowledge with regard to the earlier transaction. Such a burden of proof was not discharged by the plaintiffs and therefore the subsequent buyers were bona fide buyers for consideration. (Paras 22 and 23). *Hansa V. Gandhi* v. *Deep Shankar Roy*, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734: AIR 2013 SC 2873: (2013) 116 Cut LT 457.

Bench Strength **3**. Coram: *R.M. Lodha*, **Anil R. Dave** and *Ranjan Gogoi*, JJ. [Date of decision: 18-4-2013]

Deep Shankar Roy v. Hansa V. Gandhi, First Appeal No. 492 of 2002, order dated 24-8-2005 (Bom), modified

[**Ed.**: It would seem that Section 4(1) of the 1963 Act makes contracts for sale/agreements to sell immovable property compulsorily registerable in the State of Maharashtra. In such a case, it would seem that not only would there be a presumption of notice on the part of subsequent transferees, but deemed notice of the compulsorily registerable and duly registered prior agreements to sell/contracts for sale (CFS) vide Section 3 Expln. I TPA, 1882.

Ordinarily, an agreement to sell/contract for sale (CFS) of immovable property is not compulsorily registerable since a CFS falls within Section 17(2)(v) of the Registration Act, 1908, since a CFS is a document not itself amounting to a conveyance but merely creates a right to obtain another document which will, when executed, amount to a conveyance. However, a number of States have made a CFS compulsorily registerable either by amending Section 54 TPA for that State (this is true for Uttar Pradesh), or by a separate statute, like in the present case, by the 1963 Act in Maharashtra.

Section 3, TPA, 1882 provides:

" '**a person is said to have notice**' of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property *is required by law to be and has been effected by a registered instrument*, any person acquiring such property or any part of, or share or interest in, such property *shall be deemed to have notice of such instrument as from the date of registration*...

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act. ... (emphasis supplied)"]

(b) Allocation of risk/Liability to bear unexpected burden

See 'Remedies/Relief' — Restitutionary remedies — Recompense for benefit conferred — Quantum Meruit ("as much as is deserved"), (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252

(c) Implied obligations

— Occupier's liability *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(d) Particular Contractual Forms

(1) Contingent Contracts

— Contingent guarantee — Invocation of — When valid *See* 'Specific Contracts' — Guarantee/Surety, (2014) 1 SCC 625: (2014) 1 SCC (Civ) 502

(2) Multiple, multi-party or single contract/composite contract

[333] — Adjustment/set-off of amounts relating to different transactions — Transactions if independent — Person to whom performance owed — Performance of contract in the manner as agreed to — Breach of contract — *Appellant-Defendant 1 having received payment on behalf of respondent-plaintiff CFS (a subsidiary of Canara Bank) from Canara Bank for purchase of public sector securities in the name of CFS, instead adjusting said amount towards receivables from another subsidiary of Canara Bank [Canbank Mutual Fund (CMF)] — Legality — Trial court decreed suit of respondent-plaintiff CFS after arriving at finding that said pay order was issued on account of respondent-plaintiff CFS for purchase of said securities in its name — Contention that in view of understanding between respondent-plaintiff and CMF, said payment was made by respondent-plaintiff on behalf of CMF, rejected — Held, findings arrived at based on material on record, cannot legitimately be questioned — In instant case, appellant failed to prove that payment made by Canara Bank/ respondent-plaintiff was on behalf of CMF — Further, assertion made by appellant that broker had informed it that payment was made on behalf of CMF cannot be accepted, since letter of broker shows that said securities were sold to respondent-plaintiff — Also, it is not the case of appellant that it had delivered said securities to respondent-plaintiff — Order of trial court affirmed — Contract Act, 1872, Ss. 37, 40 and 50* (Paras 10 to 12). *Hongkong & Shanghai Banking Corpn. Ltd.* v. *Canbank Financial Services Ltd.*, (2014) 1 SCC 614: (2014) 1 SCC (Civ) 498.

Bench Strength **2**. Coram: **C.K. Prasad** and *V. Gopala Gowda*, JJ. [Date of decision: 15-7-2013]

Canbank Financial Services Ltd. v. Hongkong & Shanghai Banking Corpn. Ltd., Special Court Suit No. 11 of 2002, decided on 30-6-2004 (Bom), affirmed

(e) Restraint Clauses/Agreements

Restraint of legal proceedings

— Exception for arbitration clauses *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 7, 8, 11, 16, 44 and 45, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

4. FORMATION DEFECTS — VOID AND VOIDABLE CONTRACTS

(a) Generally

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45 and 8, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

(b) Formation Defects Rendering Contracts Void

— Unconscionable bargains *See* CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts — Government contracts, Principles for, Arts. 14, 300-A and 299, (2014) 13 SCC 341: (2014) 5 SCC (Civ) 718

(c) Formation Defects Rendering Contracts Voidable

— Undue Influence *See* 'Particular Statutes' — Contract Act, 1872, S. 25(1), (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 122, 126, 54, 5, 7 and 105, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

(d) Void and Voidable — Distinction

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 5, 11, 16 and 45, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642

5. FORMATION OF CONTRACT

(a) Consideration

See PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 118, 54 and 122, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

(b) Offer and Acceptance

— Offer — Revocation of *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

(c) The Agreement: Consensus Ad Idem

See 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

6. PARTICULAR STATUTES

(a) Contract Act, 1872

— Ss. 2(b) and 8 — Letter of intent — Non-compliance with terms and conditions — Effect *See* 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— S. 2(g) *See* S. 23

— Ss. 2(j) and 11 to 27 — Void and voidable contracts — Distinguished *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 5, 11, 16 and 45, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642

— S. 5 *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— S. 8 *See* S. 2(b)

— S. 10 *See* S. 25

— Ss. 11 to 13 *See* S. 2(j)

— Ss. 13, 14, 19, 23 and 28 *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45 and 8, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

— S. 14 *See also* S. 2(j); S. 13

— Ss. 14 to 20 *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45, 44, 16, 8 and 11, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

— S. 15 *See* S. 2(j); S. 14

— Ss. 16 to 18 *See* S. 2(j); S. 14; S. 25

— S. 19 *See* S. 2(j); S. 13; S. 14; S. 25

— S. 19-A *See* S. 25

— S. 20 *See* S. 2(j); S. 14

— Ss. 21 & 22 *See* S. 2(j)

— S. 23 *See* S. 2(j); S. 13; S. 28 Exceptions 1

See also CIVIL PROCEDURE CODE, 1908, S. 100, (2013) 14 SCC 689: (2014) 3 SCC (Civ) 512

— S. 23 — Unconscionable bargain *See* CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts — Government contracts, Principles for, Arts. 14, 300-A and 299, (2014) 13 SCC 341: (2014) 5 SCC (Civ) 718

— Ss. 23 and 2(g) *See* TENANCY AND LAND LAWS — 'Rajasthan Tenancy Act, 1955 (3 of 1955)', S. 42 proviso (as ins. by amending Act 27 of 1956), (2014) 8 SCC 282: (2014) 4 SCC (Civ) 306

— Ss. 24 & 25 *See* S. 2(j)

— S. 25 *See* S. 2(j)

— Ss. 25 and 10 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 118, 54 and 122, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 25 and 16 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 122, 126, 54, 5, 7 and 105, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 25, 19, 19-A, 16, 17 and 18 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[334] — S. 25(1) — Transfer without consideration on account of close relationship — Validity — Factum of such close relationship between parties — Whether established — No closeness

between aunt (*Massi*) and mother-in-law of niece — Transfer of immovable property by appellant aunt in favour of respondent mother-in-law of niece — Held, love and affection for niece, does not necessarily extend to a gesture of transferring immovable property, of substantial value (Rs 4 lakhs in present case), without consideration, to mother-in-law of niece — Transfer held, on facts, not valid — *Transfer of Property Act, 1882, Ss. 122, 126 and 54. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

— **Ss. 26 & 27** *See* S. 2(j)

— **S. 28** *See also* S. 13

— **Ss. 28 Exceptions 1 and 23** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 7, 8, 11, 16, 44 and 45, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

— **Ss. 32, 33 and 128 — Contingent guarantee — Invocation of — When valid** *See* 'Specific Contracts' — Guarantee/Surety, (2014) 1 SCC 625: (2014) 1 SCC (Civ) 502

— **S. 33** *See* S. 32

— **Ss. 37, 40 and 50** *See* 'Contractual Obligations and Rights' — Particular Contractual Forms — Multiple, multi-party or single contract/composite contract, (2014) 1 SCC 614: (2014) 1 SCC (Civ) 498

— **S. 39** *See* S. 51

See also GOVERNMENT CONTRACTS/TENDERS — 'Cancellation/Termination', (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

— **Ss. 40 & 50** *See* S. 37

— **Ss. 51 to 54 and 39** *See* 'Termination/Discharge of Contract' — Termination/Repudiation for Breach of Contract, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

— **S. 53** *See also* S. 51

— **Ss. 53 to 55** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

— **S. 54** *See* S. 51

— **S. 55** *See also* S. 53

— **S. 55 — Time as essence of contract — Determination of** *See* 'Particular Statutes' — Specific Relief Act, 1963, Ss. 14(1)(c), 16(b) and 9, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— **S. 62** *See also* RENT CONTROL AND EVICTION — 'Rent', (2013) 15 SCC 610: (2014) 5 SCC (Civ) 383

— **Ss. 62 and 63** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 4, 8, 7 and 11(6), (2014) 7 SCC 352: (2014) 3 SCC (Civ) 704

— **S. 63** *See* S. 62

— **Ss. 68 to 72** *See* RESTITUTION — 'Contract Act, 1872' — Ss. 68 to 72

— **S. 70** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— **S. 73** *See* S. 211

— **S. 128** *See* S. 32

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— State Financial Corporations Act, 1951, Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

— **Ss. 148, 170 and 171** *See* CIVIL PROCEDURE CODE, 1908, Or. 43 R. 1(r) and Or. 39 Rr. 1 & 2, (2014) 1 SCC 693: (2014) 1 SCC (Civ) 655

— **Ss. 151 and 172** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(3), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— **Ss. 170 & 171** *See* S. 148

— **S. 172** *See* S. 151

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— **Ss. 211, 212, 233 and 73 — Damages — Liability of agent for breach of common law duties of carrier — When arises** *See* CARRIAGE OF GOODS AND CARRIERS — 'Carriage of Goods by Sea Act, 1925', Ss. 2 & 3 and Sch. Art. III R. 3, (2011) 15 SCC 56: (2014) 2 SCC (Civ) 225

— **S. 212** *See* S. 211

— **Ss. 227 and 228** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 64, 61, 33 and 5, (2013) 10 SCC 642: (2014) 1 SCC (Civ) 69

— **S. 228** *See* S. 227

— **S. 233** *See* S. 211

(b) Specific Relief Act, 1877

— **S. 54** *See* 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38 and 35, (2014) 6 SCC 394: (2014) 3 SCC (Civ) 569

See also LOCAL GOVERNMENT — 'Municipalities' — M.P. Municipalities Act, 1961 (37 of 1961), S. 319(3), (2014) 6 SCC 394: (2014) 3 SCC (Civ) 569

(c) Specific Relief Act, 1963

— **S. 5** *See* S. 34; S. 38

— Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

See also CIVIL PROCEDURE CODE, 1908, Or. 7 R. 3 & Or. 20 R. 12 and Ss. 100, 35 & 35-B, (2014) 3 SCC 645: (2014) 2 SCC (Civ) 315

— Or. 7 Rr. 8 & 7, Or. 6 R. 7 and S. 100, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103

See also RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— **S. 5 — Proper forum for recovery of possession — Special statute** *See* RENT CONTROL AND EVICTION — 'Eviction suit/Trial', (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135

— **S. 5 — Recovery of possession based on title — Proper forum is civil court in a properly constituted suit under CPC** *See* LIMITATION — 'Limitation Act, 1963', S. 27 and Art. 65, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— Ss. 5 and 6 *See also* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 55(1)(f) and 108(b), (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

— Ss. 5 and 6 — Proper forum for recovering possession of immovable property *See* CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Non-speaking order/Dismissal in limine/Non-application of mind/Reasoned order — Need for, Art. 226, (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

— Ss. 5, 34 and 35 — Title suit — Proper forum for — Civil court — Same is not a revenue matter *See* TENANCY AND LAND LAWS — 'Jurisdiction', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— S. 6 *See* S. 38

See also TENANCY AND LAND LAWS — 'Rajasthan Land Revenue Act, 1956 (15 of 1956)', S. 91, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669

— S. 9 *See also* S. 10; S. 14(1)(c)

[335] — Ss. 9, 10, 19(b) and 20 — Maintainability of suit for specific performance — Foundational facts to ground — Burden of proof, lies on whom — Admission as to non-existence of foundational fact i.e. non-existence of contract of which specific performance sought — Effect — *Held, party who asserts a fact must prove that fact — Hence, plaintiff in a suit for specific performance who asserts that agreement of sale was executed in his favour by defendant has to prove this fact to substantiate his claim — Similarly, if plaintiff asserts that agreement of sale in favour of third party is ante-dated and fabricated to defeat his rights, plaintiff has to prove this fact — Plaintiff is also required to prove that above fact existed on date of assertion made by him — In present case, no evidence was produced by plaintiff to prove the plea that agreement of sale in favour of third party (D-6) was a fabricated document — Plaintiff also did not take necessary steps before the trial court to call D-1 and D-2 (sellers) in proceedings to cross-examine them for limited purpose of confronting their signatures found in alleged agreement of sale in favour of plaintiff and receipts of payment of advance money as they had denied execution of these documents in their written statement — D-6, on other hand, proved execution of agreement of sale in his favour and also proved receipts regarding payment of part consideration to D-1 and D-2 by producing relevant evidence — High Court holding the sale of suit property in favour of D-6 as legal and valid held, rightly set aside decree for specific performance in favour of plaintiff — Moreover, when plaintiff in his cross-examination had admitted that D-1 and D-2 never entered into any agreement of sale with him in relation to suit property — Trial court was not justified in ignoring such admission of plaintiff and merely by comparing signatures of D-1 and D-2 on sale agreement and receipts produced by plaintiff with their original admitted signatures recording finding that plaintiff proved the execution of agreement of sale in his favour — Evidence Act, 1872, Ss. 101, 103, 104 — CPC, 1908, S. 96 and Or. 12 R. 6. Ramnivas Vyas* v. *H. Srinivasa Bhati*, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 18-9-2013]

H.S. Bhati v. Harikishan, CCCA No. 102 of 1997, decided on 23-8-2002 (AP), affirmed

[336] — Ss. 9 and 10 — Suit for specific performance of compromise entered into before court — Absence of cause of action — *Proceedings initiated under Land Acquisition Act for acquisition of appellant's land for purpose of constructing administrative building of Small Scale Industries Development Corporation — During pendency of writ petition before High Court challenging acquisition proceedings, compromise arrived at whereby R-2 (Chief Manager, Industrial Estate) agreed to recovery to appellant of a portion of the land and to construct administrative building on remaining portion — Compromise taken on record by High Court by its order — Deed of reconveyance in favour of appellant executed in respect of a portion of land — But no notification issued withdrawing that portion from acquisition under S. 48 of Land Acquisition Act — Government, instead of constructing administrative building immediately in terms of compromise, allotted acquired portion of land to a private company — Suit filed by appellant for specific performance of compromise and return of acquired portion of land — However, even prior to filing of suit, Government, realising its mistake, had taken steps to withdraw allotment made in favour of the company — Held, there was no cause of action for appellant-plaintiff to seek reconveyance of parcel of land in question as respondents had already retracted steps for revocation of allotment well before filing of suit and as no notification had been issued for withdrawal of land under S. 48, hence land continued to remain with Government — Thus there was no breach of compromise on part of Government — Mere delay in constructing administrative building cannot constitute a ground for grant of decree for specific performance of compromise — Land Acquisition Act, 1894, Ss. 16 and 48 — CPC, 1908, Or. 23 R. 3 and S. 80* (Paras 10 and 11). *Tarabai* v. *State of Karnataka*, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665: AIR 2013 SC 2881: (2014) 3 Mah LJ 236: (2014) 2 MPLJ 323.

Bench Strength 2. Coram: **H.L. Gokhale** and *Ranjana P. Desai*, JJ. [Date of decision: 3-9-2013]

Basanth Tiles v. Parashuram, (2006) 6 Kant LJ 75: 2006 AIHC 195, affirmed

[337] — Ss. 9, 14(1)(c), 16(b) and 34 — Suit for specific performance — Maintainability — Subsistence of contract essential precondition — *Plaintiff having failed to perform his part of the agreement, agreement already terminated by defendant vendor — In absence of plaintiff's prayer seeking declaratory relief that termination of agreement was bad in law, held, suit for specific performance not maintainable. I.S. Sikandar* v. *K. Subramani*, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365: (2014) 118 Cut LT 89: (2014) 1 LW 47.

Bench Strength 2. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 29-8-2013]

— S. 10 *See also* S. 9

[338] — Ss. 10 and 9 — Concluded contract — Prerequisite of specific performance — Letter of intent — Non-compliance with terms and conditions — No agreement for sale that can be specifically enforced

Dismissing the appeals,

Held :

It is not in dispute that the letter of intent was issued by the developer to the plaintiffs wherein certain conditions had been incorporated and upon fulfilment of those conditions, agreements for sale of the flats were to be executed. Upon perusal of the letter of intent closely, one would find that certain conditions had been incorporated in the letter of intent. The said conditions clearly imposed a duty on the part of the intended purchasers to make payment of all the instalments payable in respect of the purchase price of the flat. It is also not in dispute that it was open to the developer to vary the price or the area to be covered by a flat in certain cases. It is not in dispute that the developer had raised the price because of the delay caused on account of the litigation faced by the Society. On account of the delay caused in construction of the flats, the cost had gone up and therefore, the developer had asked for a rise in the price which was approved by the majority of the intended purchasers of the flats. Accordingly, all the other purchasers had started paying the increased price of instalments but the plaintiffs had refused to the same and in fact they had stopped paying the instalments which were becoming due and payable after the price had been increased. It is also worth noticing that the plaintiffs did not make payment even as per the rate prescribed under the letter of intent and the terms and conditions agreed upon by them with the developer. (Para 18)

It is a fact that the plaintiffs had not entered into any formal agreement with regard to the purchase of the flats with the developer. The mere letter of intent, which was subject to several conditions, would not give any right to the plaintiffs for purchase of the flats in question till all the conditions incorporated in the letter of intent were fulfilled by the plaintiffs i.e. the proposed purchasers. It is also a fact that all the conditions, which were to be fulfilled, had not been fulfilled by the plaintiffs. (Para 19)

Further, according to the Section 4(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the agreement executed between the plaintiffs and the developer, ought to have been registered with the Sub-Registrar. In absence of such a registered document, the plaintiffs would not get any right in respect of the flats, which they intended to purchase. Moreover, in absence of the registration, the subsequent buyers could not have got an opportunity to inspect the agreement and there could not be any presumption that the subsequent buyers knew about the agreement. (Para 20)

The letter of intent cannot be said to be an agreement to sell for the simple reason that according to the contents of the letter of intent, only upon payment of the entire purchase price, the developer and the plaintiffs were to enter into an agreement with regard to sale of the flats. This fact clearly denotes that no agreement to sell had been entered into between the plaintiffs and the developer and in absence of such agreements, there cannot be any right in favour of the plaintiffs with regard to specific performance of any contract. Thus, the High Court did not commit any error while coming to the conclusion that there was no binding contract or agreement in existence between the plaintiffs and the developer and therefore, the trial court could not have decreed the suit for specific performance. (Para 21)

As no averment was made by the plaintiffs in their plaints that the subsequent buyers were not bona fide purchasers for consideration, the subsequent buyers could not have adduced any evidence to show that they were bona fide purchasers for consideration. Had such a plea been raised by the plaintiffs in their pleadings, the subsequent buyers could have adduced necessary evidence to prove their cases. In such cases, normally the burden of proof would lie on the plaintiffs unless there is a registered document so as to raise a presumption that the subsequent buyers had knowledge with

regard to the earlier transaction. Such a burden of proof was not discharged by the plaintiffs and therefore the subsequent buyers were bona fide buyers for consideration. (Paras 22 and 23). *Hansa V. Gandhi* v. *Deep Shankar Roy*, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734: AIR 2013 SC 2873: (2013) 116 Cut LT 457.

Bench Strength **3**. Coram: *R.M. Lodha*, **Anil R. Dave** and *Ranjan Gogoi*, JJ. [Date of decision: 18-4-2013]

Deep Shankar Roy v. Hansa V. Gandhi, First Appeal No. 492 of 2002, order dated 24-8-2005 (Bom), modified

[**Ed.**: It would seem that Section 4(1) of the 1963 Act makes contracts for sale/agreements to sell immovable property compulsorily registerable in the State of Maharashtra. In such a case, it would seem that not only would there be a presumption of notice on the part of subsequent transferees, but deemed notice of the compulsorily registerable and duly registered prior agreements to sell/contracts for sale (CFS) vide Section 3 Expln. I TPA, 1882.

Ordinarily, an agreement to sell/contract for sale (CFS) of immovable property is not compulsorily registerable since a CFS falls within Section 17(2)(v) of the Registration Act, 1908, since a CFS is a document not itself amounting to a conveyance but merely creates a right to obtain another document which will, when executed, amount to a conveyance. However, a number of States have made a CFS compulsorily registerable either by amending Section 54 TPA for that State (this is true for Uttar Pradesh), or by a separate statute, like in the present case, by the 1963 Act in Maharashtra.

Section 3, TPA, 1882 provides:

" '**a person is said to have notice**' of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property *is required by law to be and has been effected by a registered instrument*, any person acquiring such property or any part of, or share or interest in, such property *shall be deemed to have notice of such instrument as from the date of registration...*

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act. ... (emphasis supplied)"]

— Ss. 10 and 38 *See* CIVIL PROCEDURE CODE, 1908, Or. 21 Rr. 35, 97, 101 and 99 and S. 115, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490

[339] — Ss. 11, 16(c) and 20 — Readiness and willingness of buyer plaintiff to perform — Necessity of — Agreement to sell by trustee — Power of trustee seller to accept delayed payment of consideration — *Agreement to sell along with payment of earnest money; balance to be paid within six months — Balance amount allegedly paid after expiry of six months to the trustee but he returned it — No case that the trustee was empowered to accept the balance amount — On facts held, trial court was fully justified in holding that the plaintiff is not entitled to specific performance of the agreement — High Court committed serious error in reversing the judgment and decree of the trial court by presuming that the trustee was entitled to receive the balance amount — Trusts Act, 1882, Ss. 37, 38, 39, 15 and 36* (Para 8). *Radhakrishna Dharmartha Private Trust* v. *Parmanand Soni*, (2011) 15 SCC 692: (2014) 2 SCC (Civ) 747.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 4-9-2009]

— Ss. 14 and 20 *See* PRACTICE AND PROCEDURE — 'Adverse/Disparaging Remarks/Observations/ Strictures', (2012) 13 SCC 700: (2014) 5 SCC (Civ) 414

— S. 14(1)(c) *See also* S. 9

[340] — Ss. 14(1)(c), 16(b) and 9 — Suit for specific performance of agreement for sale of immovable property — Plaintiff's failure to perform his part of essential terms of agreement within stipulated time — Stipulation regarding time whether essence of agreement — *Reiterated, terms of agreement, conduct of parties and surrounding circumstances should be examined by court — Clause in agreement fixing 5 months' period for execution and completion of sale transaction and providing for extension of period of 2 months in case of delay in obtaining permission from Urban Land Ceiling and Income Tax authorities and consequent delay in payment of layout charge by plaintiff vendee — Another clause in agreement providing for payment of specified sum by defendant vendors to appellant-plaintiff in case of defendants' failure to comply with terms of agreement and for forfeiture of advance amount of consideration paid by plaintiff to defendants in case of plaintiff's failure to comply with terms of agreement — Purpose of execution of sale agreement stated to be dire need of money due to death of earning member of the family — Plaintiff vendee failed to perform his part of agreement within stipulated period of 7 months (including extended period of 2 months) and even within further extended period*

allowed in legal notices issued to plaintiff warning that default would entail termination of agreement — Agreement terminated thereafter by defendants — Suit for specific performance of agreement filed 11 months after expiry of limitation period stipulated in agreement — Held, sale deed was required to be executed within 7 months — Plaintiff having failed to perform his part of the agreement, specific performance of agreement cannot be enforced — Contract Act, 1872, S. 55. I.S. Sikandar v. *K. Subramani*, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365: (2014) 118 Cut LT 89: (2014) 1 LW 47.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 29-8-2013]

Chand Rani v. Kamal Rani, (1993) 1 SCC 519, applied

Nirmala Anand v. Advent Corpn. (P) Ltd., (2002) 5 SCC 481; A. Maria Angelena v. A.G. Balkis Bee, (2002) 9 SCC 597; Jawahar Lal Wadhwa v. Haripada Chakroberty, (1989) 1 SCC 76, distinguished

K. Subramani v. Zaheerunnisa Begum, Regular First Appeal No. 97 of 2001, decided on 8-12-2008 (KAR), reversed

[341] — Ss. 15 and 19(b) — Unregistered agreement of sale — Transferability and enforceability of interest created thereunder — *Trusts Act, 1882, Ss. 91, 95 and 58*

An unregistered agreement was signed by one *E* on 25-7-1973 to sell the suit land in favour of *S*, and the execution of this agreement was to be completed within a period of two years. Subsequently, *S* assigned his rights in favour of *K* vide agreement dated 7-8-1975. Thereafter, *K* also assigned its rights in favour of *V*, the vendor of Respondent 1, *P*. Vide a third agreement dated 21-9-1975. *V* was ultimately put in possession of the suit land, and thereafter had remained in possession till the present proceedings, for almost 30 years. All these agreements admittedly were unregistered agreements.

A fresh development agreement was executed much later in favour of the petitioner herein by Defendants 1 to 8 (successors-in-interest/co-sharers of *E*) on 30-12-2005 for the suit land for a consideration of Rs one crore in favour of the petitioner plaintiff, *R*. Of this amount, Rs 15 lakh was payable by the petitioner by way of earnest money at the time of execution of the agreement, whereas the balance was payable to the owners after making out a clear and marketable title as and when the petitioner/developer obtained intimation of commencement certificate. The document was adjudicated upon by the Collector of Stamps on 21-12-2005 to have a value of Rs 21.25 crores. The agreement that was entered into between the petitioner with Defendants 1 to 8/respondents herein (successors-in-interest/co-sharers of *E*) required the owner to make out a marketable title to the property free from encumbrances and was not subject to lis pendens or attachment. On the same date i.e. 30-12-2005, a supplementary agreement was further executed between the plaintiff *R* and Defendants 5 to 8 stating (*i*) that the developer plaintiff had inspected the premises and had made all necessary enquiries (Clause 1); (*ii*) the petitioner plaintiff had accepted the title of the co-owners and shall not raise any question on the title or call upon the co-owners to make out a marketable title [Clauses (*i*) and (*iii*); the co-owners had agreed to assign the development rights on as-is-where-is basis (Clause 2)]. The supplementary agreement according to the plaintiff was entered into as Defendants 5 to 8 had insisted upon such an agreement.

On 21-1-2006, a notice was published in the *Free Press Journal* on behalf of the petitioner plaintiff recording that Defendants 1 to 8 had entered into an agreement allowing the petitioner plaintiff to develop the property. This was responded to on 23-1-2006 by the advocate for *V* stating that *V* had already entered into agreement of sale with *E* through the intermediaries — *S* and *K* and this was reflected even in the will which was executed by the deceased *E* which was duly probated as a consequence of which *V* had been in possession of the suit land for more than 30 years and hence the petitioner had no right to purchase this land through any heir or co-sharer of *E* as the interest had been created in *V*.

The petitioner *R* did not take any step in pursuance of the agreement for development of the property and hence the original owners of the property/Defendants 5 to 8 terminated the agreement executed in favour of the petitioner on 2-4-2007.

After the termination of the agreement between the petitioner *R* and Defendants 5 to 8, the Defendant 9, *V* entered into a development agreement in respect of the suit land with Respondent 1 herein *P*. In a suit filed by the petitioner *R*, the trial Judge had granted an injunction restraining Respondent 1, *P* inter alia from carrying out further development of the property. This injunction had been vacated by the impugned order. The petitioner was before the Supreme Court thereagainst.

Dismissing the SLPs,

Held :

Respondent 1, *P* is claiming through *V* in whose favour the erstwhile owner *E* had executed the agreement of sale in pursuance of which possession was also delivered 30 years ago. The petitioner *R* on

the other hand having entered into an agreement of sale 30 years later from some of the co-sharers successors-in-interest of *E*, which agreement too was terminated on 2-4-2007 obviously cannot be granted an order of injunction restraining Respondent 1 from claiming the property through *V* which prima facie not only has got interest in the property but also actual physical possession of the same. On the contrary, the petitioner as of now has neither any semblance of title nor has possession on the property nor prima facie case nor balance of convenience in his favour as he is yet to take possession and develop the property. (Para 13). *Ramesh Vajabhai Rabari* v. *Pratiksha Real Estate (P) Ltd.*, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80.

Bench Strength **2**. Coram: **Gyan Sudha Misra** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

Pratiksha Real Estate (P) Ltd. v. Ramesh Vajabhai Rabari, Appeal No. 683 of 2012, decided on 18-6-2013 (Bom), affirmed

Ramesh Vajabhai Rabari v. Betram Peter D'Mello, Notice of Motion No. 1673 of 2007 in Suit No. 1280 of 2007, decided on 29-6-2012 (Bom), reversed

— S. 16 *See* S. 19(b)

— S. 16(b) *See* S. 9; S. 14(1)(c)

— S. 16(c) *See* S. 11; S. 19(b)

See also CIVIL PROCEDURE CODE, 1908, S. 100, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370

[342] — S. 16(c) — Readiness and willingness to perform plaintiff's part of agreement — Meaning — Absence of exact words of S. 16(c) in plaint — *Not fatal to suit for specific performance of agreement if sufficient facts and evidence placed on record show plaintiff's readiness and willingness — Having regard to sequence of facts and events of instant case, held, plaintiff always remained ready and willing to perform his part of agreement — Hence decree for specific performance of the reconveyance agreement, restored — Debt, Debt Recovery and Relief — Moneylending — Bengal Money-Lenders Act, 1940 (10 of 1940), S. 36. Biswanath Ghosh* v. *Gobinda Ghosh*, (2014) 11 SCC 605: (2014) 4 SCC (Civ) 192: AIR 2014 SC 1582: (2014) 104 ALR 184: (2014) 5 LW 349: (2014) 137 AIC 176: (2014) 2 Cal LT 54.

Bench Strength **2**. Coram: *J.S. Khehar* and **M. Yusuf Eqbal**, JJ. [Date of decision: 14-3-2014]

Gobinda Ghosh v. Biswanath Ghosh, AIR 2005 Cal 359: (2005) 3 ICC 278, reversed

[343] — Ss. 16(c), 20(1), (2) and 21(2) — Readiness and willingness to perform plaintiff's part of essential terms of agreement — Proof of, by plaintiff mandatory — Exercise of discretionary power under S. 20 to grant decree of specific performance of agreement when not called for — *Conduct of plaintiff prior and subsequent to filing of suit, attending circumstances and plaintiff's availability of funds to pay consideration amount, are relevant factors to be considered by court — Trial court by proper application of mind to relevant factors and appreciation of evidence, recorded finding of fact that plaintiff failed to prove his readiness and willingness to perform his part of agreement — Further, there was a compensation clause in the agreement — Held, High Court in appeal erred in reversing that finding and granting decree of specific performance of agreement under Ss. 16(c), 20(1), (2) and 21(2) by recording reasons not supported by pleadings and evidence on record — Plaintiff not entitled to decree of specific performance of agreement — CPC, 1908, Or. 41 R. 33 and Or. 20 R. 12-A. I.S. Sikandar* v. *K. Subramani*, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365: (2014) 118 Cut LT 89: (2014) 1 LW 47.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 29-8-2013]

— S. 19(b) *See* S. 9; S. 15

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3, 40 Paras 2 & 3 and S. 54, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

— Ss. 54, 53-A, S. 3 Expln. II, Ss. 48 and 40 Para 2, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— S. 19(b) — Plaintiff always ready and willing to perform his part of contract — Hence decree of specific performance granted by trial court and first appellate court to transferee under prior contract for sale (CFS) (appellant plaintiff) against subsequent transferee with notice of the prior CFS, confirmed *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370

[344] — Ss. 19(b) and 16 — Specific performance of prior agreement to sell/contract for sale (prior CFS) against subsequent transferees who had notice of prior CFS, decreed by trial court — Decree restored by Supreme Court, and the subsequent transferees directed to execute sale deeds in favour of the prior CFS holder, appellant herein — *Unregistered agreement to sell to existing tenant, S appurtenant land together with two other premises belonging to same landlady albeit partly occupied by Defendant 2 — Said agreement stipulating in detail the period within which registration should be done — Apprehending possible sale to someone else, S publishing public notices in local newspapers to assert the*

existence of agreement to sell in his favour and to warn against any person purchasing the land — Despite this, GPA-holder of landlady entering into two different agreements to sell with Defendant 3 — At this stage S filing suit for specific performance of agreement to sell made with him — Meanwhile landlady executing registered sale deed in favour of Defendant 3 with respect to part of suit property, the sale deed itself acknowledging the existence of agreement to sell with S — Thereafter, GPA-holder of landlady registering another sale deed in favour of Defendant 3 with respect to another part of suit property — S receiving from landlady a certain amount by way of compensation albeit giving an undertaking to refund the same if directed by court — Trial court finding Defendant 6 alone and none of the other transferees to be bona fide purchasers for consideration without notice — In such circumstances, S, held, entitled to get the agreement to sell to him executed and registered with respect to all of the suit land available at this stage (minus the land acquired and the land purchased by Defendant 6) — However, S having not acquired any title over land, held, was not entitled to receive any compensation from the landlady — Hence, directed to refund the same — Such refund directed to be made within three months along with 9% interest from date of receipt till date of payment — Trusts Act, 1882, Ss. 91, 95 and 96 — Transfer of Property Act, 1882, S. 40 Paras 2 & 3 and S. 54

The appellant-plaintiff was carrying on business prior to 1-1-1978 in the appurtenant land as a tenant. On 15-10-1977, the landlady (Respondent 1-Defendant 1) (R-1) entered into an agreement with him for the sale of the said land and two other premises belonging to her for a total consideration of a certain amount, part of which was paid as earnest money. The said agreement provided that the sale deed would be executed within six months from the date of agreement, or upon intimation by the vendor, as she had to obtain permission from the competent authority under Section 27, Urban Land (Ceiling and Regulation) Act, 1976 (the 1976 Act), the necessary income tax clearances and the sub-division permission from the municipal corporation. The said suit land was also in the possession of the landlady, and had partly been occupied by Defendant 2-respondent. Thereafter, the appellant-plaintiff paid non-agricultural assessment tax. He received a legal notice dated 18-6-1979 from R-1 stating that she had obtained the requisite statutory permissions from the authorities concerned.

However, R-1 tried to sell the suit property to some other persons. Therefore, the appellant-plaintiff got a public notice published in local newspapers on 29-4-1980 and 30-4-1980, in respect of the suit property, mentioning the existence of the said agreement to sell between the parties and warning that no other person must purchase the same. Even then, the GPA-holder of R-1 entered into two different agreements to sell with Respondent 2-Defendant 3 on 29-4-1980/ 30-4-1980, for a piece of open land.

The appellant-plaintiff filed a suit on 23-6-1983 for specific performance of the agreement to sell dated 15-10-1977 and for ignoring the agreement sell in favour of respondent/Defendants 3, 6 and 7.

During the pendency of the said suit, R-1 executed a sale deed, and got the same registered on 29-4-1985, in favour of Respondent 2-Defendant 3 with respect to the part of the suit property as specified. The GPA-holder registered another sale deed in favour of Respondent 2-Defendant 3 on 30-4-1985, with respect to part of the suit property. The trial court decreed the suit except for a small area, which had been purchased by Defendant 6 whom the trial court held to be bona fide purchaser for consideration without notice. The appellant-plaintiff was directed to deposit the balance consideration amount in the trial court within a period of four weeks, and the appellant-plaintiff duly deposited the same on 6-4-1991.

The High Court held, that the appellant-plaintiff was not ready and willing to perform his part of the contract, and therefore, there was no occasion to decide issues regarding the status of the subsequent purchasers. However, the High Court added that the appellant-plaintiff would be entitled to get the sale deed executed in respect of the said land, excluding the land sold to Defendants 3, 6 and 7 at the rate of Rs 750 per square yard, adjusting the amount that had already been paid.

R-1 filed a review petition before the High Court. During the pendency of the said review petition, both the sides preferred the present appeals. The review petition filed by R-1 was later dismissed by an order. The said order was also challenged in the connected Appeals Nos. 2888 and 4459 of 2005.

Allowing the appeals, of the appellant-plaintiff and dismissing the connected appeals,

Held :

So far as the notice of the agreement between the appellant and R-1 i.e. the prior contract for sale (CFS) is concerned, the trial court after taking note

of the recital of the said agreement in the subsequent agreement to sell and sale deed also, has held, that, so far as the land sold to the respondents other than Respondent 6, the parties had been fully aware of the same. Only Respondent 6 had no such notice. Thus, the appellant-plaintiff *S* the holder of the prior agreement to sell is entitled to get the sale deed executed and registered, with respect to all the suit land available now (minus the land acquired and the land purchased by Respondent 6). (Paras 24 and 26)

However, in the facts and circumstances of the case, as the appellant-plaintiff *S* has not yet acquired any title over the land, he has no right to receive compensation to the tune of Rs 29,47,112. However, he withdrew the said amount by giving an undertaking to return the said amount to the landlady in case any such order was passed by the court in that regard. The appellant is directed to refund the amount of compensation received by him to the landlady within a period of three months, along with 9% interest from the date of receipt till the date of payment. (Paras 25 and 27). *S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23: AIR 2013 SC Supp 265: (2013) 98 ALR 241: (2013) 125 AIC 25.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 10-4-2013]

Anjum Jehan v. K. Hanuman Goud, CCCA No. 34 of 1991, decided on 10-6-2003 (AP), reversed

[345] — Ss. 19(b) and 16(c) — Agreement for sale of immovable property with plaintiff terminated for non-performance of plaintiff purchaser's part of terms of agreement — Subsequent sale of same property to another person at a higher price — *Held, subsequent purchaser cannot be treated as not being a bona fide purchaser, as earlier agreement was not subsisting at time of subsequent sale — Transfer of Property Act, 1882, S. 40 Paras 2 and 3 — Trusts Act, 1882, Ss. 91, 96 and 64. I.S. Sikandar* v. *K. Subramani*, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365: (2014) 118 Cut LT 89: (2014) 1 LW 47.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 29-8-2013]

— **S. 20** *See* S. 9, S. 11

— **Ss. 20(1) & (2)** *See* S. 16(c)

— **S. 21(2)** *See* S. 16(c)

[346] — S. 22(1)(b) — Relief — Refund of earnest money with interest — Entitlement to — *Mere fact that offer of plaintiff in suit for specific performance of agreement to pay back earnest money not accepted by defendant, would not disentitle defendant to claim interest on amount of earnest money when court granted alternative relief of refund of earnest money instead of specific performance. Sarita Dokania* v. *Krishna Dey*, (2014) 13 SCC 522: (2014) 5 SCC (Civ) 728: (2013) 98 ALR 896: (2013) 126 AIC 53: (2013) 3 Cal LJ 153.

Bench Strength **2**. Coram: *S.S. Nijjar* and *P.C. Ghose*, JJ. [Date of decision: 6-5-2013]

Krishna Dey v. Sarita Dokania, First Appeal No. 5 of 2008, decided on 4-1-2011 (Pat), modified

— **S. 27** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **S. 31** *See* S. 34

See also COURT FEES — 'Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (7 of 1956)', S. 37 and S. 7 r/w Ss. 24, 26, 28, 29, 34, 35, 42 and 45, (2014) 5 SCC 603: (2014) 3 SCC (Civ) 246

— **S. 34** *See also* S. 9

[347] — S. 34 — Declaratory decree — Declaration of ownership of land on basis of adverse possession cannot be sought by plaintiff — But claim of ownership by adverse possession can be made by way of defence when arrayed as defendant in proceedings against him — *While recording finding that appellant-plaintiff was in adverse possession of suit land, held, trial court rightly refused to grant decree declaring that plaintiff's adverse possession matured into ownership — Appellant-plaintiff being in possession of suit land for long (more than 12 yrs) and having been granted decree of injunction restraining respondent-defendants from dispossessing plaintiff therefrom, its possession cannot be disturbed except by due process of law — Though appellant's suit seeking declaration of ownership by adverse possession stood dismissed, in case of respondents' filing suit for possession and/or ejectment of appellant, it would be open to appellant to plead in defence that appellant had become owner of suit land by adverse possession — At that stage it would also be open to appellant to plead that previous finding regarding appellant's adverse possession operated as res judicata — CPC, 1908, S. 11 — Limitation Act, 1963, S. 27 and Arts. 64 to 66* (Para 9). *Gurdwara Sahib* v. *Gram Panchayat Village Sirthala*, (2014) 1 SCC 669: (2014) 1 SCC (Civ) 630: (2014) 4 Mah LJ 74: (2014) 3 MPLJ 36.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **A.K. Sikri**, JJ. [Date of decision: 16-9-2013]

Gurdwara Sahib Sannauli v. State of Punjab, (2009) 154 PLR 756, approved

[**Ed.**: It is a little puzzling why it has been held that a declaration of ownership of land on the basis of adverse possession cannot be sought by a plaintiff adverse possessee ("squatter" for short), but can be used as a shield to defend such possession by a squatter as

defendant. As per S. 27, Limitation Act, 1963 (LA) the rightful owner's title stands extinguished by operation thereof, but S. 27 does not expressly state what the squatter obtains the moment the prior right to property is extinguished. Many judgments of the Supreme Court establish that the squatter acquires exactly the title that is extinguished by his adverse possession i.e. the title of the person who was entitled to immediate possession of the land. *See* paras 3 & 8 of *Balkrishnan* v. *Satya Prakash*, (2001) 2 SCC 498. In *P.T. Munichikkanna Reddy* v. *Revamma*, (2007) 6 SCC 59, in para 6, the Supreme Court held that "Modern statutes of limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time, *but also to vest the possessor with title*. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title." (emphasis supplied). This has been reiterated in *Hemaji Waghaji Jat* v. *Bhikhabhai Khengarbhai Harijan* (2009) 16 SCC 517, *Mandal Revenue Officer* v. *Goundla Venkaiah*, (2010) 2 SCC 461 and *Des Raj* v. *Bhagat Ram*, (2007) 9 SCC 64.

Though the maintainability of a declaratory suit at the instance of a plaintiff squatter has not been expressly affirmed in any judgment of the Supreme Court, there are some judgments of the Supreme Court wherein it has affirmed the declaratory relief granted to a plaintiff-squatter by the courts below or not doubted the maintainability of a declaratory suit by a squatter as plaintiff. See *Balkrishnan* v. *Satyaprakash*, (2001) 2 SCC 498; *Des Raj* v. *Bhagat Ram*, (2007) 9 SCC 641; *S.M. Karim* v. *Bibi Sakina*, AIR 1964 SC 1254 and *Krishnamurthy* v. *O.V. Narsimha Setty*, (2007) 3 SCC 569.

It would seem that upon a conjoint reading of Ss. 21, 23, 28, 32, 34, 35, 52, 68 and 71 to 77 of the Registration Act, 1908, that the Registrar/Sub-Registrar cannot refuse to register a conveyance entered into by a squatter, since the Registrar does not have the authority to question the title of the transferor. There does not seem to be any ruling of the Supreme Court on this point, but the High Courts seem to be unanimous on this issue. See *Bihar Deed Writers Association* v *State of Bihar*, AIR 1989 Pat 144 (DB) (para 3); *Hari Singh* v. *Sub-Registrar*, (1998) 120 PLR 787 (DB) (paras 8 to 11); *K. Eshaque* v. *Sub-Registrar*, AIR 2002 Ker 128 (paras 7 to 9); *Gopal* v. *District Collector, Bhandara*, (2003) 3 Mah LJ 883 (para 11); *Yadla Ramesh Naidu* v. *Sub-Registrar*, (2009) 1 ALD 337 (paras 22 to 25); *Ashwini Ashok Kshirsagar* v. *State of Maharashtra*, (2010) 3 AIR Bom R (NOC 318) 90 (paras 4 to 8); *Deep Apartment CHS Ltd.* v. *State of Maharashtra*, (2012) 6 Bom LR 3728; (paras 6 to 9); *Gurjeet Singh Madaan* v. *Sub-Registrar*, CS(OS) 340/2013, decided on 26-9-2013 (Delhi High Court, paras 23 to 25)

Thus, if the statute as interpreted by the Supreme Court clearly confers title on the squatter, and such title is transferable by registered conveyances, it is humbly submitted, whether a declaration of title of a squatter plaintiff would not remove all uncertainty as to the title to such land without in any way changing the fact that the previous owner's title stands extinguished? Why must the squatter plaintiff or his transferees wait to be sued by a person who may have no interest in suing them, having lost his title?]

[348] — Ss. 34 and 5 — Suit for declaration of title and possession — Burden of proof in case of — Reiterated, burden is on plaintiff to establish its case, irrespective of whether defendants prove their case or not — In absence of establishment of its own title, the plaintiff must be non-suited even if title set up by defendants is found against them — Weakness of case set up by defendants cannot be a ground to grant relief to plaintiff — *Evidence Act, 1872, Ss. 101 to 103*

Allowing the appeal,

Held :

In a suit for declaration of title, the burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff. The legal position, therefore, is clear that the plaintiff in a suit for declaration of title and possession could succeed only on the strength of its own title and that could be done only by adducing sufficient evidence to discharge the onus on it, irrespective of the question whether the defendants have proved their case or not. Even if the title set up by the defendants is found against them, in the absence of establishment of the plaintiff's own title, the plaintiff must be non-suited. (Paras 15 to 19)

In the instant case, the trial court as well as the High Court rather than examining that question in depth, as to whether the plaintiffs have succeeded in establishing their title on the scheduled suit land, went on to examine in depth the weakness of the defendants' title. The defendants relied on the entries in the General Land Register (GLR) and their possession or repossession over the suit land to non-suit the plaintiffs. The court went on to examine the correctness and evidentiary value of the entries in the GLR in the context of the history and scope of the Cantonment Act, 1924, the Cantonment Land Administration Rules, 1925 and tried to establish that no reliance could be placed on the GLR. The question is not whether the GLR could be accepted or not, the question is, whether the plaintiff could prove its title over the suit property in question. (Para 20)

It is settled law that the revenue records do not confer title. Even if the entries in the record-of-rights carry evidentiary value, that itself would not confer any title on the plaintiff of the suit land in question. Ext. X-1 is Classer Register of 1347 Fasli which according to the trial court, speaks of the ownership of the plaintiffs' vendor's property. These entries, as such, would not confer any title. The plaintiffs have to show, independent of those entries, that the plaintiffs' predecessors had title over the property in question and it is that property which they have purchased. (Paras 21 and 24)

During the trial, the only document that has been produced before the court was the registered family settlement and partition deed dated 11-12-1939 of the plaintiffs' predecessor-in-interest, wherein, admittedly, the suit land in question has not been mentioned. Conspicuous absence of the suit land in question in the aforesaid deed would cast doubt about the ownership and title of the plaintiffs over the suit land in question. No acceptable explanation has been given by the plaintiffs to explain away the conspicuous omission of the suit land in the registered family settlement and partition deed. The burden is on the plaintiffs to explain away those factors, but the plaintiffs have not succeeded. On the other hand, much emphasis has been placed on the failure on the part of the defendants to show the applicability of the GLR. Rather than finding out the weakness of the GLR, the courts below ought to have examined the soundness of the plaintiffs' case. In these circumstances, the judgment of the trial court decreeing the suit, which has been affirmed by the High Court, is set aside. (Paras 20 to 29). *Union of India* v. *Vasavi Coop. Housing Society Ltd.*, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66: AIR 2014 SC 937: (2014) 4 CTC 471: (2014) 3 Mah LJ 244: (2014) 2 MPLJ 486: (2014) 102 ALR 735: (2014) 134 AIC 10: (2014) 2 LW 862.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 7-1-2014]

Moran Mar Basselios Catholicos v. Thukalan Paulo Avira, AIR 1959 SC 31; Nagar Palika, Jind v. Jagat Singh, (1995) 3 SCC 426, followed

Union of India v. Vasavi Coop. Housing Society Ltd., (2002) 5 An LT 370: (2002) 5 ALD 532, reversed

[349] — Ss. 34 and 31 — Suit for declaration of title and cancellation of registration of title of defendants — Initial burden of proof to establish ownership, held, is on plaintiff and cannot be placed on defendants — Need for proper documentary proof of ownership. *Sebastiao Luis Fernandes* v. *K.V.P. Shastri*, (2013) 15 SCC 161: (2014) 5 SCC (Civ) 180: (2014) 102 ALR 871: (2014) 2 LW 512.

Bench Strength **3**. Coram: *G.S. Singhvi*, **V. Gopala Gowda** and *Chockalingam Nagappan*, JJ. [Date of decision: 10-12-2013]

Hira Lal v. Gajjan, (1990) 3 SCC 285, applied

Hero Vinoth v. Seshammal, (2006) 5 SCC 545, followed

Krishna Venctexa Porob Shastri v. Sebastiao Luis Fernandes, Second Appeal No. 30 of 1986, decided on 14-9-1998 (Bom), affirmed

— Ss. 34 and 35 *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— S. 35 *See* S. 38

— S. 37(2) *See* S. 38

— S. 38 *See also* CIVIL PROCEDURE CODE, 1908, Or. 39 Rr. 1 and 2, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— S. 38 — Anti-suit injunction — Maintainability of *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

[350] — Ss. 38, 5 and 6 — Suit for permanent injunction restraining defendant (respondent Trust) from dispossessing appellant-plaintiff from suit land, without claiming title — Maintainability — *Plaintiff being in possession has a good title against everybody except rightful owner — In absence of any assertion of respondent's ownership in written statement, legal character of respondent not known — Instead respondent submitted before Supreme Court that real owner of suit land was State of Rajasthan, which is not respondent — Even assuming respondent had some authority to evict appellant, no proceedings in accordance with law taken by respondent against appellant — Held, appellant entitled to decree of permanent injunction as prayed for, subject to right of real owner to evict appellant in accordance with law — Rajasthan Land Revenue Act, 1956 (15 of 1956), S. 91 — Evidence Act, 1872, S. 110 — CPC, 1908, Or. 7 R. 7 and Or. 2 R. 2. Ram Daan* v. *Urban Improvement Trust*, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669: (2015) 1 MPLJ 3: (2014) 106 ALR 705: (2014) 142 AIC 227: (2015) 1 Mah LJ 34.

Bench Strength **2**. Coram: **Jasti Chelameswar** and *Dr A.K. Sikri*, JJ. [Date of decision: 1-8-2014]

Perry v. Clissold, 1907 AC 73 (PC), held, approved

Ram Daan v. Urban Improvement Trust, Civil Second Appeal No. 68 of 1993, decided on 23-1-2012 (Raj), reversed

— Ss. 38 and 35 *See also* LOCAL GOVERNMENT — 'Municipalities' — M.P. Municipalities Act, 1961 (37 of 1961), S. 319(3), (2014) 6 SCC 394: (2014) 3 SCC (Civ) 569

[351] — Ss. 38 and 35 — Suit for declaration of title coupled with permanent injunction, held, is not a suit for perpetual injunction alone, as title has also been claimed — *Specific Relief Act, 1877, S. 54* (Para 8). *Nagar Palika Parishad, Mihona* v.

Ramnath, (2014) 6 SCC 394: (2014) 3 SCC (Civ) 569: (2014) 4 LW 623: (2014) 4 MPLJ 463.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *V. Gopala Gowda*, JJ. [Date of decision: 9-4-2014]

Nagar Palika Parishad, Mihona v. Ramnath, Second Appeal No. 568 of 2009, decided on 11-4-2012 (MP), reversed

[352] — Ss. 38 and 37(2) — Permanent injunction suit — Matters at large — Issues that may be considered — *Person claiming to be owner in possession filing suit for permanent injunction — Application in, by respondents seeking direction to appellant to deposit arrears of rent — Allowed by trial court, confirmed by High Court — Sustainability of — Held, in a suit for permanent injunction when question of title and relationship of landlord and tenant is not in issue such claim for deposit of rent cannot be made — Open to respondents as landlords/owners to seek possession/ eviction or seek a decree for rental arrears — Appeal allowed — High Court's order, set aside. Jonnalagadda Usha Rani* v. *Velamala Vasudeva Rao*, (2011) 15 SCC 483: (2014) 2 SCC (Civ) 621: (2011) 112 Cut LT 448.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 3-1-2011]

— **S. 39** *See* CIVIL PROCEDURE CODE, 1908, Ss. 96, 10 and 11, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

See also PROPERTY LAW — 'Possession', (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

[353] — S. 39 — Mandatory injunction for eviction of gratuitous licensees or persons in permissive possession, upon revocation of permission by owner — Grant of, by trial court, held, proper

The property in question was initially owned by a Trust, managing a temple, which had given the suit land on lease to one *C*. However, *C* constructed superstructure thereupon with his own funds. *C* had one son *S* and one daughter *J*. *C* died much before the year 1956 and as per the Hindu law as to succession prevalent at that time, on his death the superstructure along with leasehold rights over the suit property vested in his son *S*. *S* had three daughters, namely, the two respondents and the appellant herein. *S* executed a settlement deed so as to transfer the superstructure along with the leasehold rights over the property in favour of his sister *J*. Subsequently, *J* purchased the suit property from the temple authorities. *J*, being an old widow and without any issue, permitted the two respondents herein (the daughters of *S*) to reside in the front portion of the suit property. Subsequent to moving into the suit property, the behaviour of the respondents changed and they began to interfere and quarrel with the tenants, apart from abusing *J*, as a result of which *J* was forced to move out and stay with the appellant herein (the third daughter of *S*). Finally, *J* vide a legal notice called upon the respondents to vacate the suit property. The respondents replied to that notice refuting the claim of *J*. Thereafter, *J* filed a suit seeking a mandatory injunction seeking eviction of the respondents from the suit property. The said suit was contested by the respondents on the ground that they had inherited 2/3rd of the suit property, being legal heirs of *S* and the so-called settlement deed executed by *S* in favour of his sister *J* was a sham document. During the pendency of the said suit, the respondents also filed a suit for partition before the same court stating that the suit property was ancestral property of their father *S* and as legal heirs of *S* they had one-third share each in that property and the remaining one-third share belonged to the appellant, being the third daughter of *S*.

The suit filed by *J* was decreed holding that the entire right in respect of the suit property devolved on *J* through the settlement deed and the subsequent sale deed and, thus, subsequent to revocation of permission granted by *J* to the respondents to stay on the suit property, the respondents were liable to vacate the suit property. On the other hand, the suit filed by the respondents was dismissed holding that since *J* was the absolute owner of the suit property, there was no question of partition of that property giving the respondents 2/3rd share therein.

Aggrieved by the dismissal of their suit, the respondents preferred an appeal before the High Court i.e. AS No. 1173 of 2004. They also challenged the judgment and decree passed in the suit filed by *J* in another appeal i.e. AS No. 1175 of 2004. During the pendency of the aforesaid appeals, *J* died. On the application of the respondents, the High Court impleaded the appellant herein as the sole legal heir of the deceased *J*. Both the said appeals were heard together. The appeal against the dismissal of the respondents' suit was dismissed. However, the other appeal against the decree passed in the suit filed by *J* was partly allowed. The said two appeals were decided by the same Judge in quick succession. In the second appeal which was allowed partly, the High Court held that there was no specific evidence to show that the property was given only as permissive occupation and the same had been revoked on a particular day and that since there was a dispute over the title, it was for the parties concerned to file an appropriate suit in relation thereto and in the event of succeeding in that suit only, the appellant herein

would have a right to evict the respondents herein. Hence, the present appeal.

Allowing the appeal,

Held :

Since *J* was found to be the absolute owner of the property, the possession of the part of this property with the respondents has to be permissive as rightly found by the trial court. It is not the case of the respondents that they were inducted as tenants or in any other capacity which would confer upon them any right to stay therein. On the contrary, the case put up by them was that they were entitled to inherit one-third share each in the said property by virtue of succession which is found to be a baseless scheme. On these facts, the trial court was right in passing the decree of mandatory injunction in a suit which was filed by *J*. (Para 13). *Gowri* v. *Shanthi*, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250: AIR 2014 SC 2863: (2014) 107 ALR 106.

Bench Strength 2. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 31-3-2014]

7. PERFORMANCE OF CONTRACT

(a) Conditional/Reciprocal Performance

— Failure to perform, when performance was conditional on performance of a promise which was not performed by the other party — Such failure to perform, held, does not amount to repudiatory breach permitting the other party to invoke termination clause in contract *See* 'Termination/Discharge of Contract' — Termination/Repudiation for Breach of Contract, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

(b) Modes and Order of Performance

— Person to whom performance owed — Adjustment/set-off of amounts relating to different transactions — Transactions if independent *See* 'Contractual Obligations and Rights' — Particular Contractual Forms — Multiple, multi-party or single contract/composite contract, (2014) 1 SCC 614: (2014) 1 SCC (Civ) 498

(c) Time of Performance

(1) Termination/Discharge/Compensation/Penalty for delayed performance

— Delay in performance — Apportionment of liability for *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

(2) Time of the Essence

See 'Particular Statutes' — Specific Relief Act, 1963, Ss. 14(1)(c), 16(b) and 9, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

8. REMEDIES/RELIEF

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(b) Recovery of Benefit conferred/Loss incurred during currency of contract

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(c) Remedies for Breach of Contract

(1) Specific Remedies

(i) Refund of Contractual price/Deposit/Earnest money

See also 'Particular Statutes' — Specific Relief Act, 1963, S. 22(1)(b), (2014) 13 SCC 522: (2014) 5 SCC (Civ) 728

— Entitlement to interest thereon *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

(ii) Specific Performance of Contract

1. Defences respecting suits for relief based on contract

1.1 Breach of contract/Termination of contract

See 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 14(1)(c), 16(b) and 34, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

1.2 Formation defects/Non-existence of contract

See also 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 10, 19(b) and 20, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

— Concluded contract — Prerequisite of specific performance — Letter of intent — Non-compliance with terms and conditions — No agreement for sale that can be specifically enforced *See* 'Particular Statutes' — Specific Relief Act, 1963, Ss. 10 and 9, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

2. Discretion and powers of court

— Generally *See* 'Particular Statutes' — Specific Relief Act, 1963, Ss. 16(c), 20(1), (2) and 21(2), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— Relief — Interim relief/arrangement pending adjudication of telecast rights *See* CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — Interim/Interlocutory orders, Art. 136, (2011) 15 SCC 428: (2014) 2 SCC (Civ) 611

3. Non-enforceable cases

3.1 Determinable Contracts

See 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 14(1)(c), 16(b) and 34, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— Ss. 14(1)(c), 16(b) and 9, (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

3.2 Readiness and willingness to perform

See 'Particular Statutes' — Specific Relief Act, 1963, Ss. 11, 16(c) and 20, (2011) 15 SCC 692: (2014) 2 SCC (Civ) 747

— S. 16(c), (2014) 11 SCC 605: (2014) 4 SCC (Civ) 192

— Ss. 16(c), 20(1), (2) and 21(2), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— Nature of question — Question of fact *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370

4. Practice and Procedure

— Maintainability of suit for specific performance — Foundational facts to ground — Burden of proof, lies on whom — Admission as to non-existence of foundational fact i.e. non-existence of contract of which specific performance sought — Effect *See* 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 10, 19(b) and 20, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

(d) Restitutionary remedies

(1) Recompense for benefit conferred

(i) Quantum Meruit ("as much as is deserved")

[354] — Claim for additional amount over and above contractually agreed amount on ground of excess amount spent — Impermissibility of — Principle of subsidiarity — Applicability of, in claiming restitutionary relief — *Binding effect of terms of contract on parties — Once rate had been fixed in contract for a particular work, contractor is not entitled to claim additional amount merely because he had spent more for carrying out said work — Contract Act, 1872, S. 70*

Dismissing the appeal,

Held :

As per the contract, the contractor was to be paid for cutting the earth and sectioning to profile, etc. @ Rs 110 per cubic metre. However, the arbitrator awarded the a rate of Rs 210 per cubic metre. There may be some merit in the contention that the contractor was required to spend a huge amount on the rock blasting work but once the rate had been fixed in the contract for a particular work, the contractor was not entitled to claim additional amount merely because he had to spend more for carrying out such work. The whole exercise undertaken by the arbitrator in determining the rate for the work at Serial No. 3 of Schedule A was beyond his competence and authority. It was not open to the arbitrator to rewrite the terms of the contract and award the contractor a higher rate for the work for which rate was already fixed in the contract. The arbitrator having exceeded his authority and power, the High Court cannot be said to have committed any error in upsetting the award passed by the arbitrator with regard to Claim 4. Thus, the High Court did not commit any error in upsetting the award of the arbitrator with regard to Claim 4 in the statement of claim. (Paras 11 and 12). *Satyanarayana Construction Co.* v. *Union of India*, (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252.

Bench Strength **2**. Coram: *R.M. Lodha* and *J.S. Khehar*, JJ. [Date of decision: 12-10-2011]

Union of India v. Satyanarayana Construction Co., (2005) 3 An LT 460: (2005) 2 Arb LR 496 (AP), affirmed

(ii) Recovery of Money Paid/Interest/Profits earned

— Entitlement to interest thereon *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

9. SPECIFIC CONTRACTS

(a) Agency

— Principal's Rights and Liabilities — Bank Manager acting beyond authority *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 64, 61, 33 and 5, (2013) 10 SCC 642: (2014) 1 SCC (Civ) 69

(b) Bailment

See CIVIL PROCEDURE CODE, 1908, Or. 43 R. 1(r) and Or. 39 Rr. 1 & 2, (2014) 1 SCC 693: (2014) 1 SCC (Civ) 655

(c) Construction and Building

See 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

(d) Guarantee/Surety

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

[355] — Guarantor's/Surety's Rights and Liabilities — Conditional/Contingent guarantee — Invocation of, by creditor without condition specified being fulfilled — Invalidity of — *Guarantee by appellant Board to pay interest on principal amount of loan taken by S from respondent Bank, if principal amount is paid by borrower S within time prescribed i.e. without any default — Fastening of liability on Board despite failure by borrower, S to fulfil said condition — Unsustainability — On failure of borrower S to pay principal amount itself, Bank filed suit against borrower S for principal amount and against appellant Board for interest — Suit decreed in favour of Bank fixing liability of interest on appellant Board, upheld by High Court — Sustainability — Held, upon default by borrower S to pay principal amount of loan, appellant is absolved of its liability of paying interest on behalf of borrower S to Bank — Thus, appellant cannot be held liable to pay interest on behalf of borrower S — However, since appellant had also agreed that any charge that had been created on borrower's assets in its favour would be released in favour of Bank, held, appellant's liability is limited to surrender of its first charge over assets of borrower S in favour of Bank — Contract Act, 1872, Ss. 32, 33 and 128* (Paras 9 and 10). *Karnataka State Khadi & Village Industries Board* v. *Punjab National Bank*, (2014) 1 SCC 625: (2014) 1 SCC (Civ) 502: (2013) 101 ALR 245: (2013) 131 AIC 88: (2013) 4 KCCR 3105.

Bench Strength 2. Coram: **A.R. Dave** and *Dipak Misra*, JJ. [Date of decision: 13-9-2013]

Karnataka State Khadi and Village Industries Board v. Punjab National Bank, Regular First Appeal No. 164 of 2004, decided on 29-7-2005 (KAR), reversed

10. TERMINATION/DISCHARGE OF CONTRACT

(a) Termination by Agreement

— Contractual provisions for discharge — Strict compliance with *See* GOVERNMENT CONTRACTS/TENDERS — 'Cancellation/Termination', (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

(b) Termination by Frustration/Impossibility

— Induced Frustration/Impossibility *See* 'Termination/Discharge of Contract' — Termination/Repudiation for Breach of Contract, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

(c) Termination/Repudiation for Breach of Contract

— Generally — Termination clause — Strict compliance with *See* GOVERNMENT CONTRACTS/TENDERS — 'Cancellation/Termination', (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

[356] — Breaches that give rise to Right to Terminate/Repudiate — Repudiation of contract/Refusal to perform by other party — Failure to perform, when performance was conditional on performance of a promise which was not performed by the other party — Such failure to perform, held, does not amount to repudiatory breach permitting the other party to invoke termination clause in contract — *Contract of construction of irrigation canals — Agreement provided that respondent to supply cement, RCC templates and PCC slabs for putting them on the bed of canal and for other uses once contractor completes canal excavation, embankment, lining/casing, etc. — Contractor abandoned work on ground that respondent had not supplied cement and cement materials as agreed despite many reminders, nor authorised him to procure cement from open market to complete the work — Respondent terminated contract, imposed penalty and forfeited earnest money, security deposit and withheld bill amount after terminating contract — Legality — In suits filed thereagainst by appellant contractor, trial court concluded that due to non-supply of cement and cement materials by respondent as agreed upon in the contract, progress of work could not be carried out and appellant contractor was not at fault for non-completion of agreed work — High Court reversed said findings of fact holding that appellant failed to comply with conditions of tender and committed breach of contract by not placing indent for cement and cement materials — Sustainability — In instant case, trial*

Judge being the fact-finding authority duly considered entire evidence after proper analysis and it has recorded findings of fact — Conclusion and findings arrived at by High Court by reappreciation of evidence are contrary to the pleadings and evidence on record — Trial court also adverted to proceedings of respondent Department wherein departmental action was proposed against Superintendent Engineer (D-4) for his injudicious act in not supplying cement and cement materials causing stoppage of the work by contractor — Hence, held, High Court erroneously set aside findings of trial court by recording findings of fact without proper analysis and reappreciation of evidence on record and wrongly applied terms and conditions of the contract to the fact situation without noticing that the defendants had in fact committed breach of contract — Lastly, High Court relied on evidence that no indent was placed by contractor for supply of cement and cement materials, which was not pleaded in written statement, which is wholly inadmissible in law — On merits, respondent categorically admitted non-supply of said materials, and numerous letters by appellant contractor evidencing request for supply of cement and cement materials were on record — Hence, judgment and decrees of trial court restored with modification of rate of interest from 18% to 9% — Contract Act, 1872, Ss. 51 to 54 and 39 — CPC, 1908, S. 100, Or. 8 R. 2 and Or. 18 R. 2 (Paras 24 to 48)

The appellant-plaintiff, a Class I contractor, submitted tenders upon an invitation from the defendants, the respondents herein, for execution of the balance work of canals and his offer of bid was accepted. He had deposited the earnest money in the form of bank guarantee and parties entered into a contract for execution of the work. Accordingly, Defendant 4, Executive Engineer, Irrigation Department issued work orders to the plaintiff. As per Clause 2 of the agreement, the execution of work was to be completed within a period of 15 months from the date of handing over the site to the plaintiff excluding the monsoon season from 15th June to 15th September of the relevant years.

It was the case of the plaintiff that he was able to complete his part of the work such as canal excavation, embankment, morum lining/casing, etc. within a short period deploying his staff and machinery. Upon progress of execution of work, the plaintiff wrote several letters addressed to Defendant 4 requesting him to supply cement, RCC templates and PCC slabs for putting them to the bed of the canal and for other uses. It is the further case of the plaintiff that as per the meeting which was held between the plaintiff and Defendant 4, revealed that the cement and cement materials were in stock and were available with Defendant 4, but he had purposely delayed the supply of cement and cement materials and he also did not authorise the plaintiff to procure cement from the open market and made certain false accusations against him.

It was the case of the plaintiff that despite repeated requests and demands made by him vide his letters referred to supra, Defendant 4 failed to supply cement and cement materials required by the plaintiff to complete the work, therefore he had no option but to terminate the contract with the defendants. The appellant-plaintiff asked the respondents to finalise the bill regarding the execution of work by him and to terminate the contracts without imposing any penalty. It was the further case of the plaintiff that Defendant 3 passed an order terminating the contract and levied penalty on the plaintiff. Before terminating the contract, Defendant 3 neither issued notice nor heard the plaintiff, as required under Clause 3(*d*) of the agreement, though the contract is terminated by invoking Clause 3(*d*) of the agreement by him.

The appellant-plaintiff, being aggrieved by the termination of the contract and failure on the part of the defendants to make payments for the work done and return of earnest money and security deposit amount, filed eight original suits against the defendants before the Civil Judge (Senior Division), seeking for grant of declamatory relief that the order of termination of the contract passed by Defendant 3 in respect of works of canal is illegal and not binding on him and refund of the earnest money and security deposit amount and for payment of bill amount in respect of the work executed by him with interest @ 18%.

The trial court framed nearly nine issues for its determination. The suits went for trial. Common evidence was recorded in all the original suits. After hearing the arguments, the suits of the plaintiff were decreed in part by recording reasons in the common judgment. The correctness of the common judgment of the trial court and decrees passed in the original suits of the plaintiff were challenged by the defendants before the High Court urging various legal contentions. The High Court, after adverting to the relevant necessary facts, formulated the points for its consideration and answered the same in favour of the defendants and against the plaintiff holding that the finding of fact and reasons recorded by the trial court on the contentious issues are vitiated on account of erroneous reasoning for

non-consideration of the material evidence on record in favour of the defendants and in the absence of evidence in favour of the plaintiff. Against the order of the High Court, the present appeals have been filed.

Allowing the appeals, the Supreme Court held as above. *Ramachandra Narayan Nayak* v. *Karnataka Neeravari Nigam Ltd.*, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 27-8-2013]

11. VARIATION, RECTIFICATION AND NOVATION OF CONTRACT

See also RENT CONTROL AND EVICTION — 'Rent', (2013) 15 SCC 610: (2014) 5 SCC (Civ) 383

— Modes of novation/variation and when permissible — Novation by mutual consent *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 4, 8, 7 and 11(6), (2014) 7 SCC 352: (2014) 3 SCC (Civ) 704

12. WAIVER

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 4, 8, 7 and 11(6), (2014) 7 SCC 352: (2014) 3 SCC (Civ) 704

CONTRACT/CANCELLATION OF AGREEMENT/ LICENCE

See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

CONTRACTS/AGREEMENTS/GOVERNMENT CONTRACTS

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Particular deeds, documents and clauses

CONTRACTUAL INTEREST/RATE OF INTEREST

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

CONTRACTUAL MATTERS (INCLUDING GOVERNMENT CONTRACTS AND AUCTIONS)

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

CONTRACTUAL OBLIGATIONS AND RIGHTS

See CONTRACT AND SPECIFIC RELIEF

COOPERATIVE BANKS

See DEBT, FINANCIAL AND MONETARY LAWS — 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase'

COOPERATIVE HOUSING/HOUSING SOCIETY

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COOPERATIVE SOCIETIES

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1. GENERAL ISSUES

(a) Bye-laws

[357] — Primacy of, in governance of Society, including on crucial issues such as admission of new members and dealing with property of Society. *Mohd. Moinuddin* v. *Registrar of Coop. Societies*, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602: AIR 2014 SC 2680.

Bench Strength **2**. Coram: *S.S. Nijjar* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 7-5-2014]

V. Sivaramakrishna v. K. Satyanarayana, WP No. 701 of 2003, order dated 14-12-2006 (AP), approved

Voltas Employees Coop. Housing Building Society v. B.K.S. Murthy, Writ Appeal No. 144 of 2007, decided on 15-9-2009 (AP), reversed

(b) Cooperative Housing/Housing Society

See LOCAL GOVERNMENT — 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

— Ss. 118, 54 and 122, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Cooperative Housing Societies — Transfer of flat without consideration — Alleged close relationship between transferor and transferee, not established — Transfer not valid on facts *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Contract Act, 1872, S. 25(1), (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Dispute case as to transfer of membership/ flat — On facts, principle of estoppel held, not applicable *See* EVIDENCE ACT, 1872, S. 115, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Dispute case as to transfer of membership/ flat — Rejoinder filed by alleged transferor to written

replies of transferee — Consideration of *See* CIVIL PROCEDURE CODE, 1908, Or. 8 R. 9, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[358] — Membership — Admission of new members — Whether valid — Role that may be played by Registrar/Dy. Registrar of Cooperative Societies if admission is done in due compliance with bye-laws of the Society concerned — Ultimate authority vesting in general body under bye-laws — *Executive Committee in its meeting decided to admit 37 persons as members of Society pursuant to instructions of Dy. Registrar of Cooperative Societies — Admission ratified in meeting of general body — But subsequently Dy. Registrar issued a communication withdrawing his earlier instruction on basis of direction issued by Registrar under S. 4(2) of A.P. Cooperative Societies Act, 1964 — When Society proceeded to withdraw membership of 37 persons, High Court in writ petition set aside the proceedings, leaving it to Society to decide one way or the other — That decision of High Court followed in another decision of High Court — Later High Court in two other decisions held the admission of those persons to be valid and the said decisions having not been challenged became final — Held, admission of the 37 persons, as based on meeting of Executive Committee and ratified in general body meeting, was valid and beyond any controversy — Stand taken by Dy. Registrar by withdrawing his earlier instruction was not permissible in law — If at all membership of those persons was to be cancelled, same could be done by applying provisions of Society's bye-laws — A.P. Cooperative Societies Act, 1964 (7 of 1964), S. 4(2)* (Paras 30 to 35). *Mohd. Moinuddin* v. *Registrar of Coop. Societies*, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602: AIR 2014 SC 2680.

Bench Strength **2**. Coram: *S.S. Nijjar* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 7-5-2014]

[359] — Property/Funds of Society — To be regulated only as per bye-laws of Society — *Founder members as well as subsequently admitted members of Society invested large sums as deposits into Society — All those investments formed part of funds of Society for which Society must account for — Claim of founder members that entire value of land purchased by Society was borne by them and therefore, they would be entitled to distribution of land entirely amongst themselves, not tenable — Land having been purchased by Society, it vested in Society and therefore, it was for Society to decide how to deal with it in accordance with cooperative principles, objects of Society and as per its bye-laws — A.P. Cooperative Societies Act, 1964 (7 of 1964) — Transfer of Property Act, 1882, S. 5 Expln.. Mohd. Moinuddin* v. *Registrar of Coop. Societies*, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602: AIR 2014 SC 2680.

Bench Strength **2**. Coram: *S.S. Nijjar* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 7-5-2014]

V. Sivaramakrishna v. K. Satyanarayana, WP No. 701 of 2003, order dated 14-12-2006 (AP), approved

Voltas Employees Coop. Housing Building Society v. B.K.S. Murthy, Writ Appeal No. 144 of 2007, decided on 15-9-2009 (AP), reversed

— Transfer of membership/flat *See also* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 122, 126, 54, 5, 7 and 105, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[360] — Transfer of membership/flat — Approval of, by Deputy Registrar, Cooperative Societies — Non-consideration of withdrawal of offer of transfer prior to approval — Effect — *Letter to Deputy Registrar, Cooperative Societies by appellant transferor/seller for directing Society to take action on withdrawal of her offer of transfer of membership in favour of respondent purchaser — Withdrawal letter earlier addressed to Society also attached — Approval granted to transfer of membership/flat without considering this withdrawal letter, held, not valid. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

[361] — Transfer of membership/flat — Transfer document — Validity — Effect of absence of registration number of Society on document — Transfer document alleged to be executed at residence of Secretary of Society — *Held, absence of registration number of Society on transfer document made the same suspicious as in the event of execution at Secretary's residence, registration number would have been supplied by the Secretary and mentioned in the document — Transfer of Property Act, 1882, Ss. 7, 54 and 122 — Registration Act, 1908, Ss. 21 and 22. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

[362] — Transfer of membership/flat — Transfer documents — Execution — Proof — Statement of notary — Relevance — Effect of notary being an advocate — No additional credit to statement of notary merely because he is an advocate — *Evidence of three witnesses as to absence of transferor in the city (Calcutta in pres-*

ent case) where alleged transfer documents executed — Rejection of evidence of these witnesses merely on ground that notary (son-in-law of sister of transferee) was advocate and his statement carried more weightage than that of transferor's witnesses — Held, not valid — Moreover, in absence of any notarial certificate issued by notary in terms of S. 8 of Notaries Act, 1952, notary's statement should have been rejected — Notaries Act, 1952, S. 8 — Evidence Act, 1872, Ss. 64, 68, 72 and 144 — Transfer of Property Act, 1882, Ss. 9, 54 and 122 — Registration Act, 1908, Ss. 17 and 49. Pratima Chowdhury v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

[363] — **Transfer of membership/flat — Withdrawal/revocation of offer of transfer — Stage at which such withdrawal can be considered by Society — Effect of non-consideration** — *Held, withdrawal of offer of transfer can be considered by Cooperative Society before the transfer has attained finality — Transfer of membership/flat would assume finality only upon approval of same by Deputy Registrar, Cooperative Societies — On facts, when revocation of offer of transfer was sought by appellant transferor prior to approval of transfer by Deputy Registrar, Cooperative Societies, Society was not justified in not considering withdrawal letter of appellant — It was imperative for Society to have examined the withdrawal letter when transfer certainly had not been concluded — Acceptance or rejection on merits is another matter, but non-consideration by Society will invalidate subsequent action taken by Society — Contract Act, 1872, S. 5 — Transfer of Property Act, 1882, Ss. 122, 54 and 5. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

(c) Membership

See 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

(d) Property of Society

See 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

2. PARTICULAR STATE AND LOCAL STATUTES, RULES, REGULATIONS AND BYE-LAWS

(a) A.P. Cooperative Societies Act, 1964 (7 of 1964)

See also 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

— **S. 4(2)** *See* 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

(b) W.B. Cooperative Societies Act, 1983 (45 of 1983)

— **Ss. 95 and 96** *See* CIVIL PROCEDURE CODE, 1908, Or. 8 R. 9, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

COORDINATE BENCH

See PRECEDENTS

COORDINATE BENCH/SMALLER BENCH VIS-À-VIS LARGER

See PRECEDENTS

COORDINATE BENCHES

See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court whether itself bound — Inter-bench conflicts

COPYRIGHT ACT, 1957

See INTELLECTUAL PROPERTY

CORPORATE LAWS

[364] — **Articles of association — Nature of — Held, have no force of a statute** (Para 15). *Hill Properties Ltd.* v. *Union Bank of India*, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513: (2014) 186 Comp Cas 284: (2014) 102 ALR 813.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 11-9-2013]

— **Partnership Act, 1932 — S. 29** *See* CIVIL PROCEDURE CODE, 1908, Or. 22 R. 10 or Or. 30 R. 4(2), (2013) 15 SCC 217: (2014) 5 SCC (Civ) 220

CO-SHARER/CO-OWNER/JOINT OWNERSHIP

See PROPERTY LAW

COSTS

See CIVIL SUIT

See also CONSTITUTION OF INDIA — 'Article 136' — 'Article 226'

See also PRACTICE AND PROCEDURE

COSTS, AWARD OF

See CONSTITUTION OF INDIA — 'Article 32'

COUNTER-CLAIMS/SET-OFF

See CIVIL SUIT

COUNTERCLAIMS/PLEADINGS/CLAIMS

See ARBITRATION

See also PRACTICE AND PROCEDURE

COURT

See COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts'

COURT-AUCTION/SALE

See CIVIL SUIT

See also PRACTICE AND PROCEDURE

COURT DEPOSIT OR ORDER/REFUNDABLE AMOUNT/REFUND/REFUND OF DEPOSIT

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

COURT FEES

1. ANDHRA PRADESH COURT FEES AND SUITS VALUATION ACT, 1956 (7 OF 1956)

[365] — S. 37 and S. 7 r/w Ss. 24, 26, 28, 29, 34, 35, 42 and 45 — Suit for cancellation of sale deed — Valuation of, for the purpose of court fee and jurisdiction — *Held, said suit has to be valued on basis of sale consideration mentioned in sale deed and not on basis of market value of the property on date of presentation of plaint — Said S. 37 distinguished in this regard from S. 7 r/w Ss. 24, 26, 28, 29, 34, 35, 42 and 45 of the aforesaid Andhra Pradesh Court Fees Act, which provide for payment of court fee on the market value of the property — Words and Phrases — "Value of the property" and "market value of property" — Contrasted — Specific Relief Act, 1963, S. 31. Polamrasetti Manikyam* v. *Teegala Venkata Ramayya*, (2014) 5 SCC 603: (2014) 3 SCC (Civ) 246: AIR 2014 SC 1286: (2014) 2 CTC 458: (2014) 103 ALR 687: (2014) 136 AIC 198: (2014) 2 LW 534.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 19-2-2014]

Satheedevi v. Prasanna, (2010) 5 SCC 622: (2010) 2 SCC (Civ) 490, followed

Allam Venkateswara Reddy v. Golla Venkatanarayana, AIR 1975 AP 122; Dantuluri Venkata Narasimha Raju v. Dantuluri Chandrayya, (1927) 26 LW 159: AIR 1927 Mad 825; Navaraja v. Kaliappa Gounder, (1967) 80 LW (SN) 19 (Mad); Arunachalathammal v. Sudalaimuthu Pillai, (1970) 83 LW 789 (Mad), held, approved

Kolachala Kutumba Sastri v. Lakkaraju Bala Tripura Sundaramma, (1939) 49 LW 566: AIR 1939 Mad 462, held, distinguished

Polamarasetti Manikyam v. Teegala Venkata Ramayya, Civil Revision Petition No. 2539 of 2010, order dated 20-8-2010 (AP), reversed

Lakshminagar Housing Welfare Assn. v. Syed Sami, (2010) 5 An LT 96, overruled

Krishnan Damodaran v. Padmanabhan Parvathy, 1972 KLT 774; P.K. Vasudeva Rao v. K.C. Hari Menon, AIR 1982 Ker 35; Pachayammal v. Dwaraswamy Pillai, (2006) 3 KLT 527; Appikunju Meerasayu v. Meeran Pillai, 1964 KLT 895; Uma Antherjanam v. Govindaru Namboodiripad, 1966 KLT 1046, held, overruled

2. COURT FEES ACT, 1870

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— Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

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[366] — Courts and tribunals — Difference between — Restated (Para 35). *Standard Chartered Bank* v. *Dharminder Bhohi*, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243: (2013) 101 ALR 465: (2013) 132 AIC 208.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

(b) Andhra Pradesh Civil Courts Act, 1972 (19 of 1972)

[367] — S. 1(3) — Exclusion of jurisdiction of civil court from Scheduled Area — Consequently all decrees passed by civil courts in Scheduled Area becoming nullity and decree-holder unable to realise fruits of decree — Challenge to — *Held, it was observed that persons of non-Scheduled Area cannot be subjected to methodology of litigation in Scheduled Area — Consequently matter was referred for consideration of State Government — Decision was taken by State Government for continuation of existing methodology — In view of such decision, no interference with issue of nullity of decrees called for — However, decree-holders directed to appear before competent forum of law prescribed for Scheduled Area and such authority would decide the issue without being influenced by orders, judgment or decrees of civil court — Constitution of India, Art. 371-D* (Paras 4 and 9). *Nagarjuna Grammena Bank* v. *Medi Narayana*, (2013) 11 SCC 362: (2014) 1 SCC (Civ) 555.

Bench Strength **2**. Coram: *R.M. Lodha* and *Anil R. Dave*, JJ. [Date of decision: 25-9-2012]

Medi Narayana v. Nagarjuna Grammena Bank, CRP No. 2888 of 1998, decided on 27-6-2000 (AP), affirmed

[368] — S. 1(3) — Exclusion of jurisdiction of civil courts in scheduled area — Propriety of — *Held, litigation methodology cannot be different between people belonging to scheduled area and people belonging to non-scheduled area — This issue required consideration of State Government for appropriate measures — Three months time sought for action on issue — Hence, matter adjourned* (Paras 3 to 5). *Nagarjuna Grammena Bank* v. *Medi Narayana*, (2013) 11 SCC 367: (2014) 1 SCC (Civ) 560.

Bench Strength **2**. Coram: *H.K. Sema* and *L.S. Panta*, JJ. [Date of decision: 23-1-2008]

(c) Court

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(d) Presidency Small Cause Courts Act, 1882

[369] — Ch. VII — Legislative history of, traced (Paras 19 to 29). *Prabhudas Damodar Kotecha* v. *Manhabala Jeram Damodar*, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260: AIR 2013 SC 2959: (2013) 100 ALR 378: (2013) 129 AIC 113.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 13-8-2013]

[370] — Ch. VII S. 41(1) (as amended by Maharashtra Act 19 of 1976) — Interpretation of — Applicability of provisions of Bombay Rent Act, 1947 — *Held, although some expressions used in S. 28 of Bombay Rent Act, 1947 and in S. 41(1) (as amended by Maharashtra Act 19 of 1976) of PSCC Act, 1882 are in pari materia, however Bombay Rent Act, 1947 and PSCC Act, 1882 are not pari materia statutes — Reasons for, explained — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), Ss. 28, 50 and 51. Prabhudas Damodar Kotecha* v. *Manhabala Jeram Damodar*, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260: AIR 2013 SC 2959: (2013) 100 ALR 378: (2013) 129 AIC 113.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 13-8-2013]

[371] — S. 41(1) (as amended by Maharashtra Act 19 of 1976) — Expression "licensee" in — Scope — Gratuitous licensee, held, covered — Thus, suit filed by a licensor against a "gratuitous licensee", held, is maintainable before a Small Cause Court — *"Licensee" in S. 41(1) of PSCC Act, 1882, held, does not only mean "licensee" within meaning of S. 5(4-A) of 1947 Rent Act — Expression "licensee" used in S. 41(1) of PSCC Act, 1882 as amended in State of Maharashtra is a term of wider import intended to bring in a gratuitous licensee as well and does not derive its meaning from the expression "licensee" as used in S. 5(4-A) of 1947 Rent Act, as gratuitous licensee does not fall within S. 5(4-A) r/w Ss. 5(11) and 15-A of 1947 Rent Act — Provisions of said S. 41(1) of the PSCC Act, 1882 do not specifically exclude a gratuitous licensee or make any distinction between licensee for material consideration or without material consideration — S. 52 of Easements Act, 1882 which also makes no such distinction, is in pari materia with said S. 41(1) of PSCC Act, 1882 — Expression "licensee" employed in S. 41 of the PSCC Act, 1882 (as amended in State of Maharashtra) is used in the general sense of the term "licensee" as defined in*

S. 52 of Easements Act, 1882 — Therefore, S. 41(1) of the PSCC Act, 1882 could not have contemplated any other meaning of the term "occupation with permission" but only permission as contemplated by S. 52 of Easements Act — Legislative awareness of contemporaneous statutes i.e. Easements Act, Transfer of Property Act enacted in 1882 taken into consideration — Principle of contemporenea expositio applied — Rule of noscitur a sociis, *held, is inapplicable as intention of the legislature in using the expression "licensee" in S. 41(1) (as amended in State of Maharashtra) is clear and unambiguous —* Noscitur a sociis *is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words are intentionally used by the legislature in order to make the scope of the defined word correspondingly wider — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), Ss. 15-A, 5(4-A) r/w S. 5(11) — Words and Phrases — "Licensee" and "gratuitous licensee" — Easements Act, 1882, S. 52* explained (Paras 33 to 36 and 42 to 60). *Prabhudas Damodar Kotecha* v. *Manhabala Jeram Damodar*, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260: AIR 2013 SC 2959: (2013) 100 ALR 378: (2013) 129 AIC 113.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 13-8-2013]

Sonia Bhatia v. State of U.P., (1981) 2 SCC 585; Bhaiji v. SDO, (2003) 1 SCC 692, followed

Prabhudas Damodar Kotecha v. Manharbala Jeram Damodar, (2007) 5 Mah LJ 341, affirmed

Ramesh Dwarkadas Mehra v. Indravati Dwarkadas Mehra, AIR 2001 Bom 470, reversed

P.R. Aiyar: The Law Lexicon, 2nd Edn., 1997; Black's Law Dictionary, 6th Edn.; Stroud's Judicial Dictionary of Words and Phrases, 6th Edn., Vol. 2, referred to

[372] — S. 41(1) (as amended by Maharashtra Act 19 of 1976) — Insertion of expressions "licensor" and "licensee" by said 1976 Amendment — One umbrella policy conferring exclusive jurisdiction on one court in all suits between licensor and licensee — Rationale behind, explained — *Held, objective of said Amendment was to bring all suits between "landlord and tenant" and "licensor and licensee" whether under Rent Act or under PSCC Act, 1882 under one roof — Hence, legislature after having conferred exclusive jurisdiction on one court in all the suits between licensee and licensor would not have envisaged carving out any exception to keep gratuitous licensee alone outside its jurisdiction — Legislative intent behind amendments made to Rent Act and Statement of Objects and Reasons of 1976 Amendment taken into account* (Paras 57 to 60). *Prabhudas Damodar Kotecha* v. *Manhabala Jeram Damodar*, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260: AIR 2013 SC 2959: (2013) 100 ALR 378: (2013) 129 AIC 113.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 13-8-2013]

Sonia Bhatia v. State of U.P., (1981) 2 SCC 585; Bhaiji v. SDO, (2003) 1 SCC 692, followed

Prabhudas Damodar Kotecha v. Manharbala Jeram Damodar, (2007) 5 Mah LJ 341, affirmed

Ramesh Dwarkadas Mehra v. Indravati Dwarkadas Mehra, AIR 2001 Bom 470, reversed

P.R. Aiyar: The Law Lexicon, 2nd Edn., 1997; Black's Law Dictionary, 6th Edn.; Stroud's Judicial Dictionary of Words and Phrases, 6th Edn., Vol. 2, referred to

— S. 41(1) (as amended in State of Maharashtra) *See* PROPERTY LAW — 'Easements Act, 1882', S. 52, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

(e) Provincial Small Cause Courts Act, 1887

— S. 25 *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745

— S. 26 *See* RENT CONTROL AND EVICTION — 'Jurisdiction', (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759

(f) Punjab Courts Act, 1918 (6 of 1918)

— S. 41 *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2012) 13 SCC 405: (2014) 5 SCC (Civ) 647

(g) Tribunals

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— Enforcement/Execution of its orders *See* (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Enforcement/Execution of orders of, by appellate court — Permissibility *See* (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Fundamental policy of Indian law — Fundamental juristic principles (non-exhaustive) applicable to every determination by a court or any authority, enunciated *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

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[373] — Procedure to be followed by — Compliance with principles of natural justice required

though compliance with CPC not required — Testing validity of procedure followed by tribunal — Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with — *Securities and Exchange Board of India Act, 1992, Ss. 11(3), 15-U, 15-Y and 15-Z. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

3. JUDICIAL PROCESS

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(a) Abuse of process

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— Costs personally recoverable from Officers Concerned — When warranted *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[374] — Relaxation of order of Supreme Court — Seeking relaxation from lower authorities — Impermissibility — *Sahara Companies case — Order of Supreme Court passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012, directing two Sahara Companies to refund investors' money illegally collected by them within 3 months of the order — By further order dt. 5-12-2012 passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, time for deposit of money was extended by Supreme Court — Extension of time to comply with orders of Supreme Court dt. 31-8-2012 and 5-12-2012, sought by Sahara Companies, first from SEBI, then SAT and then High Court, amounted to abuse of process — Constitution of India, Arts. 144, 32, 139 and 131 to 137* (Paras 47 and 48). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

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(b) Allocation of Work, Roster and Benches

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— Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty of Bench to which matter assigned by Chief Justice, who is the Master of the Roster, to adjudicate the matter *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(c) Approach/Bases for judicial decision

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(d) Delay/Speedy disposal

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[375] — **Completion of cases within time schedule — Emphasised** — *Held, courts should constantly endeavour to follow a time schedule — If time schedule is not followed, then the very purpose of amendment of Civil Procedure Code would get defeated — Applications for adjournments, reopening and recalling should as far as possible be avoided and only for compelling and acceptable reasons such applications be considered — Process adopted by courts should not cause delay in trial — If delay is caused then appropriate costs can be awarded — Further, courts should take up cases and complete them within fixed time schedule to avoid delay — If courts come to the conclusion that mischievous and frivolous applications are filed then they should reject them with heavy costs — CPC, 1908, S. 35* (Paras 14 and 15). *Bagai Construction* v. *Gupta Building Material Store*, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382: AIR 2013 SC 1849: (2013) 116 Cut LT 489: (2013) 97 ALR 728: (2013) 124 AIC 70: (2013) 2 LW 610.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 22-2-2013]

(e) Exercise of power

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— **Duty to give "findings", held, implies duty to give reasons** *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— **Fundamental policy of Indian law — Fundamental juristic principles (non-exhaustive) applicable to every determination by a court or any authority, enunciated** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

(2) Abuse of process

— **Conduct of litigant not amenable to rule of law — Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice — Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance** *See* RULE OF LAW, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(3) Discrimination by court

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(4) Enforcement/Execution of court orders

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See also 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

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— S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

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(5) Natural Justice/Reasons/Application of mind

See CIVIL PROCEDURE CODE, 1908, S. 100, (2012) 13 SCC 405: (2014) 5 SCC (Civ) 647

See also CONSUMER PROTECTION — 'Consumer Protection Act, 1986', Ss. 22 and 23, (2013) 14 SCC 610: (2014) 5 SCC (Civ) 439

See also PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— **Compliance with principles of natural justice required though compliance with CPC not required — Testing validity of procedure followed by tribunal — Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with** *See* 'Courts, Tribunals and Special Courts' — Tribunals, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[376] — **Duty to consider submissions/contentions/arguments of parties — Scope** — *Held, it is the onerous duty of courts to deal with submissions/contentions/arguments of parties, however brazen they may be (*see also *Shortnote* B *in SCC)* (Paras 127, 8, 43, 59 and 94 to 100). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— **Notice of proceedings** *See* NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Violation of — Ex debito justitiae jurisdiction — If and When available *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

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— Judicial independence and courage, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 7, 8, 11 and 2(b), (2014) 11 SCC 148: (2014) 4 SCC (Civ) 33

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— Duty of courts — Clarity and certainty in the law — Simplification of the law *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

— Progressive interpretation *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

(i) Judicial discipline and comity

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— High Court following Full Bench decision of High Court which had been overruled by Supreme Court — Impermissibility *See* CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Other forums that are bound — High Courts, Arts. 141 and 144, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490

(j) Jurisdiction/Matters at large

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(k) Maintainability

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[377] — Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time — Introduction of "Code of Compulsory Costs" — Suggestion to Parliament to formulate some mechanism so that anyone who initiates and continues a litigation with senseless, ill-considered and illegitimate claims pays for the same — *Held, when litigating party would understand that it would have to compensate the party which would succeed, unnecessary litigation will be substantially reduced — However, it is not suggested that court fee or other litigation related costs should be raised as access to justice and related costs should be as free and as low as possible — Sahara Group litigation, held, is a classic illustration of such frivolous litigation in which hundreds of precious Judge hours wasted — Regulating authority i.e. SEBI had to suffer litigation from court to court incurring public expense in its defence against this frivolous litigation — Every order was consistently and systematically disobeyed — Every order passed by SEBI was assailed before next higher authority, and then before Supreme Court — Even though High Courts have no jurisdiction in respect of issues regulated by SEBI Act, some matters were taken to High Court — Every such endeavour resulted in failure and was also sometimes accompanied with strictures — Even after the matter had concluded after the controversy had attained finality, judicial process still being abused for close to two years — Such abuse of judicial process needs to be remedied — Hence, appropriate action on part of Parliament called for to deter litigants like Sahara Companies and its promoter, Subrata Roy Sahara — CPC, 1908, Ss. 35, 35-A and 35-B. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

(l) Recall/Review/Revision

See CONSTITUTION OF INDIA, Arts. 137, 129, 136 and 32, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

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See also PRACTICE AND PROCEDURE — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

See also RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

— Correction of judicial error, held, is no cause for embarrassment *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(m) Recusal by Judge

[378] — Demand for, on baseless and unfounded insinuations — Calculated psychological offensives and mind games adopted by counsel to seek recusal of Judges, held, need to be strongly repulsed (as done herein) — Such tactics deprecated and similar approach commended to other courts when they experience such behaviour — Held, any act of bench-hunting or bench-hopping or bench-avoiding cannot be allowed — Judge not to recuse himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement — Further held, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs — *Hence, even in the face of calculated psychological offensives and mind games as adopted by counsel in the present case, oath of office of Judge, to decide every case without fear or favour, requires the Judge concerned to press on with the hearing of the matter and bear the brunt of rhetoric of the counsel or party seeking to dissuade him/her from hearing the matter — Constitution of India, Arts. 124(6) & 219 r/w Sch. III Forms IV & VII and Arts. 32, 136, 142, 226 & 129. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425: 1957 SCR 575; Frome United Breweries Co. Ltd. v. Bath JJ, 1926 AC 586: 1926 All ER Rep 576 (HL); R. v. Sussex JJ, ex p McCarthy, (1924) 1 KB 256: 1923 All ER Rep 233 (DC); R. v. Essex JJ, ex p Perkins, (1927) 2 KB 475: 1927 All ER Rep 393 (DC), distinguished

Halsbury's Laws of England, Vol. XXI, p. 535, para 952, cited

Jaswant Singh v. Virender Singh, 1995 Supp (1) SCC 384, applied

Court On Its Own Motion v. State, Cri Misc No. 9955 of 2007 in WP (Cri) No. 796 of 2007, order dated 4-10-2007 (Del), held, affirmed

[379] — Grounds for Plea of bias/prejudice to party — When maintainable — Need for plea of bias to be a genuine one — Need for there to be some lis or dispute on merits remaining to be adjudged, for there to even be occasion for bias — *Held, in the absence of a genuine plea of bias, Judge recusing himself from the matter would constitute an act in breach of oath of office of the Judge which mandates the Judge to perform duties of his office, to the best of his ability, without fear or favour, affection or ill will — In any case, merits of claims/counterclaims of rival parties being already settled by order dt. 31-8-2012, there was no room for further adjudication on merits by present Bench — Therefore, there cannot be a prejudged mind: all that was to be decided, had already been adjudged — Supreme Court Rules, 1966, Or. 7 R. 1 — Constitution of India, Arts. 124(6) & 219 r/w Sch. III Forms IV & VII and Arts. 32, 136, 142, 226 & 129. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425: 1957 SCR 575; Frome United Breweries Co. Ltd. v. Bath JJ, 1926 AC 586: 1926 All ER Rep 576 (HL); R. v. Sussex JJ, ex p McCarthy, (1924) 1 KB 256: 1923 All ER Rep 233 (DC); R. v. Essex JJ, ex p Perkins, (1927) 2 KB 475: 1927 All ER Rep 393 (DC), distinguished

Halsbury's Laws of England, Vol. XXI, p. 535, para 952, cited

Jaswant Singh v. Virender Singh, 1995 Supp (1) SCC 384, applied

Court On Its Own Motion v. State, Cri Misc No. 9955 of 2007 in WP (Cri) No. 796 of 2007, order dated 4-10-2007 (Del), held, affirmed

[380] — Plea of embarrassment to court — No embarrassment/humiliation is occasioned to court or to a Judge in rectifying its/his own incorrect order — *Sahara Companies case — Writ petition against impugned order of detention of petitioner placed for hearing before same Bench of Supreme Court which had passed that order — Prayer for recusal from matter on ground of possible embarrassment/discomfort to hearing Bench, rejected — Held, correction of wrong order would never put anyone to shame — Recognition of mistake, and its rectification, would certainly not put the present Bench of Supreme Court to shame — Embarrassment could only arise when order assailed is actuated by personal and/or extraneous considerations, and pleadings record such accusation — No such allegation was made in present writ petition — Constitution of India, Arts. 137 and 32 — Supreme Court Rules, 1966, Or. 7 R. 1 — CPC, 1908, S. 114 and Or. 47. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

[381] — Refusal to recuse when plea for recusal a ploy to unnecessarily prolong the matter — *Evident that petitioner's plea for recusal of present Bench was consciously calculated to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Dep-*

recated stringently and seeing through the ploy, plea for recusal, rejected — Constitution of India, Arts. 136 & 226. Subrata Roy Sahara v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Sahara India Real Estate Corpn. Ltd. v. SEBI, (2013) 1 SCC 1: (2013) 1 SCC (Civ) 1: (2013) 1 SCC (Cri) 257 (order dated 31-8-2012); Subrata Roy Sahara v. Union of India, WP (Cri) No. 57 of 2014, order dated 12-3-2014 (SC), referred to

(n) Role of the Bar, Administration and Public Institutions/Officers

— Assistance to court — What is *See* 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[382] — Availability of justice to all — Necessity of transparency and accountability in functioning of both the Bench and Bar — *Where Court is not working properly or if the Bar is not rendering proper assistance, tantamounts to failure of administration of justice — Conversion of legal profession, a noble profession, into a commercial undertaking, in the present day lamented* (Paras 18 and 19). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

— Emerging pressures on judicial system — Hope expressed for support for officers presiding over courts from the legal fraternity, as also, from superior judiciary up to the highest level *See* 'Judiciary' — Generally, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Frivolous litigation — Abuse of process — Willingness of counsel to be engaged for, if litigant willing to pay their fee — Ways and means to curb the same and consequent saving of courts' precious time *See* 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Lawyers and Judges are equal partners in the administration of justice — Duties and standards expected of advocates as an officer of the court and towards their clients/litigants *See* ADVOCATES — 'Generally', (2014) 1 SCC 572: (2014) 1 SCC (Civ) 483

— Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— State as a Litigant/Party *See also* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— State as a Litigant/Party — Costs personally recoverable from Officers Concerned — Held, costs should be real and compensatory and not merely symbolic — Exemplary costs can be awarded where appeal is devoid of merit *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— State as a Litigant/Party — Costs personally recoverable from Officers Concerned — When warranted *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

4. JUDICIARY

(a) Generally

See 'Judiciary' — Judicial independence and courage, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

[383] — Emerging pressures on judicial system — Hope expressed for support for officers presiding over courts from the legal fraternity, as also, from superior judiciary up to the highest level — *With such support, it will be possible to maintain equanimity and equilibrium essential to deal with complicated disputations and also to deal with unscrupulous litigants like the petitioner and the two Sahara Companies. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

[384] — Powers and authority of a Judge — Scope — Judiciary, held, as an institution has extremely sacrosanct duties, obligations and responsibilities — A Judge must decide every dispute in consonance with law and not according to his will. *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

(b) Judges vis-à-vis Judges

[385] — Adverse remarks against other Judges — Disparaging remarks, observations and strictures — Against lower judiciary — To be avoided — Reasons for — Expunction of remarks, when to be allowed — *Held, higher courts every day come across orders of lower courts which are not justified either in law or in fact and modify them or set them aside — The legal*

system acknowledges fallibility of Judges, hence it provides for appeals and revisions — Inasmuch as lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have facilities which are available in higher courts, therefore, adverse remarks/observations and strictures against them are to be avoided, particularly if judicial officer has no occasion to put forth his defence — Further, if adverse material complained of is wholly irrelevant and unjustifiable and its retention on records will cause serious harm to persons to whom it refers and its expunction will not affect reasons for judgment or order, request for expunging such remarks is to be allowed — Hence, reiterated, harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before courts of law, unless it is really for the decision of a case as an integral part thereof (Paras 9 to 11). *Awani Kumar Upadhyay* v. *High Court of Judicature of Allahabad*, (2013) 12 SCC 392: (2014) 2 SCC (L&S) 581: (2014) 1 SCC (Cri) 686: (2014) 1 SCC (Civ) 476: AIR 2013 SC 2189.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 13-2-2013]

Parkash Singh Teji v. Northern India Goods Transport Co. (P) Ltd., (2009) 12 SCC 577: (2010) 1 SCC (L&S) 160; Amar Pal Singh v. State of U.P., (2012) 6 SCC 491: (2012) 3 SCC (Civ) 1013: (2012) 3 SCC (Cri) 179: (2012) 2 SCC (L&S) 271, followed

[386] — Adverse remarks against other Judges — Expunction of adverse remarks — Adverse remarks passed against subordinate judicial officer by superior court — No logical reasoning given by superior court as to what was fault of officer and no finding as to why it disagreed with reasoning given by officer — Strictures passed, neither warranted nor in conformity with settled law propounded by Supreme Court — Expunction directed — *CPC, 1908, Or. 41 R. 23-A and S. 100*

In the present case the first appellate court had framed 12 additional issues and on those additional issues, the matter was remanded to the court of the appellant as he was working as Civil Judge, Senior Division. Thereafter, in compliance with the order of the first appellate court, the appellant recorded the evidence of parties and gave his findings. The High Court, while allowing the second appeal, passed severe strictures against the appellant and forwarded a copy of his judgment to the Chief Justice of the High Court, to consider as to whether disciplinary proceedings were warranted against him. The appellant's case herein was that in the impugned judgment and order, the High Court had neither furnished any independent finding on issues which were determined by the appellant nor anything about his ultimate decision. The instant case was confined only to the portion wherein the High Court had made certain strictures. The appellant also asserted that the High Court had not considered that the appellant had not rendered any decision as trial Judge or as Judge of the first appellate court. It was only on the direction by the first appellate court, that the 12 additional issues were adjudicated by the appellant. That, if the "severe strictures", were allowed to stand, they would affect his entire future prospects of service.

Allowing the appeals,

Held :

The adverse remarks made against the appellant were neither justified nor called for. A perusal of the impugned judgment shows that the words "severe stricture" are mentioned whereas no logical reasoning has been given as to what is the fault of the appellant Judicial Officer and the High Court has not adduced any finding as to why it has disagreed with the reasoning given by the appellant particularly when the appellant asserted that neither has he rendered any decision as the trial Judge nor as the first appellate court Judge except deciding 12 additional issues on the directions issued by his predecessor. The strictures passed against the appellant are neither warranted nor are in conformity with the settled law as propounded by the Supreme Court. Hence, the adverse remarks passed in the impugned judgment and the final orders insofar as the appellant is concerned, are set aside. (Paras 12 and 13). *Awani Kumar Upadhyay* v. *High Court of Judicature of Allahabad*, (2013) 12 SCC 392: (2014) 2 SCC (L&S) 581: (2014) 1 SCC (Cri) 686: (2014) 1 SCC (Civ) 476: AIR 2013 SC 2189.

Bench Strength **2**. Coram: **P. Sathasivam** and *J.S. Khehar*, JJ. [Date of decision: 13-2-2013]

U.P. Avas Evam Vikas Parishad v. Lajja Ram, Second Appeal No. 1444 of 2000, decided on 1-3-2012 (All), modified

(c) Judicial independence and courage

— Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Correction of judicial error, held, is no cause for embarrassment *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty of Judge not to recuse himself unless there is genuine likelihood of bias *See* 'Judicial

Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Fearlessness and resoluteness with equanimity — Bench-hunting or bench-hopping or bench-avoiding — Attempts at — Need to be strongly repulsed *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[387] — Oath of office — Duty to decide all cases without fear or favour — Duty to repulse calculated psychological offensives and mind games to intimidate Judges to seek their recusal — *Constitution of India, Arts. 32, 136 and 226. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425: 1957 SCR 575; Frome United Breweries Co. Ltd. v. Bath JJ, 1926 AC 586: 1926 All ER Rep 576 (HL); R. v. Sussex JJ, ex p McCarthy, (1924) 1 KB 256: 1923 All ER Rep 233 (DC); R. v. Essex JJ, ex p Perkins, (1927) 2 KB 475: 1927 All ER Rep 393 (DC), distinguished

Halsbury's Laws of England, Vol. XXI, p. 535, para 952, cited

Jaswant Singh v. Virender Singh, 1995 Supp (1) SCC 384, applied

Court On Its Own Motion v. State, Cri Misc No. 9955 of 2007 in WP (Cri) No. 796 of 2007, order dated 4-10-2007 (Del), held, affirmed

(d) Judicial propriety/Bias

— Bench-hunting or bench-hopping or bench-avoiding — Attempts at — Need to be strongly repulsed *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty to Judge not to recuse himself unless there is genuine likelihood of bias *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

5. SUPREME COURT, FEDERAL COURT AND PRIVY COUNCIL

(a) Supreme Court

— Generally *See also* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Generally — Bench-hunting or bench-hopping or bench-avoiding — Attempts at — Need to be strongly repulsed *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[388] — Generally — Different kinds of jurisdictions exercised by Supreme Court, discussed — *Constitution of India, Arts. 32, 13, 139 and 131 to 137. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Generally — Implementation of orders of Supreme Court *See* CONSTITUTION OF INDIA, Arts. 129, 142 and 144, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[389] — Generally — Supreme Court Judge — Maturity of a Supreme Court Judge — *Constitution of India, Arts. 124 and 129 to 145. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

[390] — Implementation/execution of orders of Supreme Court — Mode/method — Arrest and detention — When should be resorted to — Held, power of directing arrest and detention can be exercised by Supreme Court, as and when Supreme Court is satisfied, in the facts and circumstances of given case, that the above means should be adopted for execution of its orders — *In instant case of Sahara Companies, petitioner contemnors had miserably failed i.e. petitioner promoter of Sahara Companies and its Directors, to comply with orders of Supreme Court passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012 and* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, dt. 5-12-2012 — Accordingly, in exercise of powers under Arts. 142 and 129 of Constitution, Supreme Court had rightly ordered arrest and detention of contemnors vide order dated 4-3-2014 to enforce compliance of its orders — Such detention order, held, valid — Constitution of India, Arts. 142 and 129. Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405: 1989 SCC (Cri) 171, followed

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), affirmed

***Applied in** SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 8 SCC 751*

[**Ed.**: The Supreme Court in the present case, before coming to the conclusion as to the validity or otherwise of the impugned detention order dated 4-3-2014, made a detailed study of all the efforts that were made by the Supreme Court to cajole the contemnors, including the petitioner Subrata Roy Sahara, for compliance with the orders of the Supreme Court dated 31-8-2012 and 5-12-2012. *See* paras 45 to 58.]

(b) Supreme Court Rules, 1966

[391] — Or. 4 R. 6 — Advocates-on-Record — Position, role and duty to Court, examined — *Institution of AsOR is meant to facilitate working of the Supreme Court and assisting Registry — An AOR cannot lend his signatures just to camouflage requirement of the rules — An AOR is accountable and responsible for whatever is written and pleaded by appearing in Court to maintain solemnity of records of the Court* (Paras 13, 17 and 21 to 24). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

***Followed in** Sanjay Kumar v. State of Bihar, (2014) 9 SCC 230*

[392] — Or. 4 R. 8-A — Advocates-on-Record — Misconduct — *AOR only lending his signatures without taking any responsibility for conduct of a case, held, amounts to misconduct of his duty towards Court and defeats purpose of having institution of AsOR* (Para 13). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

[393] — Or. 4 R. 8-A — Court's power of removal of AOR from register of AsOR — Term "otherwise" in R. 8-A — Interpretation of — *Supreme Court is competent to proceed against an AOR suo motu, without any complaint from any person, if prima facie it is of the opinion that an AOR is guilty of misconduct or of conduct unbecoming of an AOR — Words and Phrases — "Otherwise"* (Paras 8 and 9). *Rameshwar Prasad Goyal, Advocate, In Re*, (2014) 1 SCC 572: (2014) 1 SCC (L&S) 192: (2014) 1 SCC (Cri) 481: (2014) 1 SCC (Civ) 483: AIR 2014 SC 850: (2014) 3 Mah LJ 644: (2013) 130 AIC 90: (2013) 5 LW 193: (2014) 3 MPLJ 362.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

— Or. 7 R. 1 *See* 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Or. 13 R. 6 — Non-applicability — Absence of executing mechanism under relevant Act (SEBI Act) *See* (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Or. 41 R. 1 — Costs *See* (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

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CRIMINAL CONSPIRACY/BANK SCAM/ EMBEZZLEMENT/FORGERY
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

CROWN DEBT/DEBT OWED TO STATE/TAX ARREARS
See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

CUSTOMER SERVICE/BANKING BUSINESS/ SERVICES/NEGLIGENCE/TRANSACTIONS
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking Business

DAMEGAS FOR WRONGFUL USE/MESNE PROFITS/TRESPASS
See PROPERTY LAW

DAMAGES/COMPENSATION
See TORT LAW

DARGAH KHWAJA SAHEB ACT, 1955
See TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts'

DATE OF COMMENCEMENT/CESSATION OF INTEREST
See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

DEBT, DEBT RECOVERY AND RELIEF
See DEBT, FINANCIAL AND MONETARY LAWS

DEBT, FINANCIAL AND MONETARY LAWS
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1. BANKS

(a) Bank employee/Bank officers/officials/Misconduct

See (2014) 3 SCC 755: (2014) 2 SCC (Civ) 339 — (2013) 10 SCC 686: (2014) 1 SCC (Civ) 98

See also (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523

— Bank Manager acting beyond authority *See* 'Negotiable Instruments Act, 1881', Ss. 64, 61, 33 and 5, (2013) 10 SCC 642: (2014) 1 SCC (Civ) 69

— Vicarious liability of master (Bank) for acts of his servant *See* CONSUMER PROTECTION — 'Services' — Banking and other financial services, (2011) 15 SCC 113: (2014) 2 SCC (Civ) 256

(b) Bank scam/Criminal conspiracy/Embezzlement/Forgery

See also (2014) 3 SCC 755: (2014) 2 SCC (Civ) 339

— (2013) 10 SCC 686: (2014) 1 SCC (Civ) 98

— Quashment of criminal proceedings — When not warranted — Payment by defaulter on orders of DRT cannot be taken as compromise between defaulter and bank *See* (2013) 10 SCC 686: (2014) 1 SCC (Civ) 98

(c) Banking business

(1) Bank account/Opening of account

See 'Banks' — Banking business — Banking transactions, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1

(2) Banker and Customer

— Malpractice by Customer — Criminal liability *See* (2014) 3 SCC 755: (2014) 2 SCC (Civ) 339

(3) Banker's lien

— Invocation of — When valid *See* RESTITUTION — 'Contract Act, 1872', S. 72, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1

(4) Banking services/Customer service/Negligence

See (2014) 7 SCC 215: (2014) 3 SCC (Civ) 680

See also RESTITUTION — 'Contract Act, 1872', S. 72, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1

[394] — Letter of credit (LoC) — Issues relating to settlement of LC amount and consequent closure of account thereafter — Whether constituted one cause of action herein — *Bill of exchange against, honoured by Bank and payments made to account holder — But LoC amount not received by Bank, so it debiting account of said account holder (plaintiff herein) and finally due to non-regularisation of account/non-settlement of dues, Bank closing account — Issues relating to settlement of LC amount and consequent closure of account thereafter, held, in present case constituted one cause of action — Hence only one suit in respect thereof was maintainable. SBI* v. *Gracure Pharmaceuticals Ltd.*, (2014) 3 SCC 595: (2014) 2 SCC (Civ) 308: AIR 2014 SC 731: (2014) 4 Mah LJ 20: (2014) 2 MPLJ 696: (2014) 118 Cut LT 59: (2014) 102 ALR 223: (2014) 133 AIC 6: (2014) 1 LW 1.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 22-11-2013]

Sandeep Polymers (P) Ltd. v. Bajaj Auto Ltd., (2007) 7 SCC 148; Naba Kumar Hazra v. Radhashyam Mahish, (1931) 34 LW 444: AIR 1931 PC 229; Sidramappa v. Rajashetty, (1970) 1 SCC 186; Gurbux Singh v. Bhooralal, AIR 1964 SC 1810; Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137, applied

Gracure Pharmaceuticals Ltd. v. SBI, RFA No. 497 of 2006, order dated 8-12-2008 (Del), reversed

— Vicarious liability of master (Bank) for acts of his servant *See* CONSUMER PROTECTION — 'Services' — Banking and other financial services, (2011) 15 SCC 113: (2014) 2 SCC (Civ) 256

(5) Banking transactions

[395] — International funds transfer — How occurs — Explained by example — *Held, an international fund transfer occurs with either payer's or payee's bank, or both banks, located in a country other than that of the currency of the transfer — Unlike a domestic credit transfer, international funds transfer may be subject to more than one law — Offshore and onshore International funds transfer — Explained. Metro Exporters (P) Ltd.* v. *SBI*, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1: AIR 2014 SC 3206.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 23-4-2014]

Law of Bank Payments, 3rd Edn. (Michael Brindle and Raymond Cox) Sweet & Maxwell, 2004, referred to

[396] — International funds transfer — Nostro and Vostro Accounts — *Nostro account is an overseas account which is held by a domestic bank in a foreign bank or with own foreign branch of the Bank — An account which is Nostro for one bank is Vostro for another — When State Bank of India opens a Nostro account with Bank of America, it is Vostro for State Bank of India and Nostro for Bank of America — Words and Phrases — "Nostro" and "Vostro"* (Paras 21 and 22). *Metro Exporters (P) Ltd.* v. *SBI*, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1: AIR 2014 SC 3206.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 23-4-2014]

[397] — International funds transfer — SWIFT (Society for Worldwide Interbank Financial Telecommunication) — *Held, operates international financial message system which enables payment instructions and related messages, including statements, foreign exchange and money market confirmations, and collections* (Para 12). *Metro Exporters (P) Ltd.* v. *SBI*, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1: AIR 2014 SC 3206.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 23-4-2014]

Paget's Law of Banking, 12th Edn., p. 304, referred to

(6) Discounting cheque/bill of exchange

— Bank Manager acting beyond authority *See* 'Negotiable Instruments Act, 1881', Ss. 64, 61, 33 and 5, (2013) 10 SCC 642: (2014) 1 SCC (Civ) 69

(7) Letter of Credit (LoC)

See 'Banks' — Banking business — Banking services/Customer service/Negligence, (2014) 3 SCC 595: (2014) 2 SCC (Civ) 308

See also (2013) 10 SCC 686: (2014) 1 SCC (Civ) 98

(d) Banking Regulation Act, 1949

[398] — S. 5(b) — "Banking" — Ambit — Whether includes cooperative banks — Implications for State enacting legislation to protect investors of such cooperative banks (Paras 8 to 18). *Soma Suresh Kumar* v. *Govt. of A.P.*, (2013) 10 SCC 677: (2014) 1 SCC (Cri) 378: (2014) 1 SCC (Civ) 90: AIR 2013 SC Supp 816: (2013) 180 Comp Cas 277.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 12-9-2013]

2. DEBT, DEBT RECOVERY AND RELIEF

Synopsis

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(a) Crown Debt/Debt owed to State/Tax arrears

See 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, S. 29, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

See also PROPERTY LAW — 'Common law principles', (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— First charge/Overriding charge for recovery of sales tax dues created by statute *See* (2013) 14 SCC 619: (2014) 5 SCC (Civ) 681

[399] — Liability of auction-purchaser (subsequent purchaser) to pay outstanding dues of Central excise of erstwhile owner — When does not arise — Held, it is only where entire business itself is purchased as an on going concern, is purchaser responsible to discharge liability of Central excise as well — Mere purchase of some of the properties of a person who had outstanding dues in respect of excise duty, held does not make subsequent purchaser liable therefor, in absence of specific provision in statute creating first charge relating to Government dues/Excise duty over said property and which charge binds the subsequent purchaser/transferee either at law or in equity — *In present case, there was no statutory provision creating a first charge in relation to excise dues at relevant point in time — Hence, secured creditor and thus appellant subsequent transferee auction-purchaser of secured property, not liable for the same — Auction sale held as per S. 29 of State Financial Corporation Act, 1951 (SFC) — Central Excise Department issued demand notices on appellant auction-purchaser to clear outstanding dues of Central excise duty of erstwhile owner in view of clauses in auction notice and in sale deed/agreement to the effect that "all statutory liabilities arising out of said properties shall be borne by purchaser/vendee" — Sustainability — Appellant denying said liability since properties were purchased in open auction from UPFC, free from all encumbrances — Tenability — Held, being a secured creditor, SFC gets priority over debts of Central Excise in absence of specific provision creating charge over property under Central Excise Act, 1944 — Further, as per clauses in auction notice and sale deed, purchaser is liable to discharge only that statutory liability arising out of sale of land and building which could be property tax or cess and sales tax, etc. relating to sale of plant and machinery — In instant case, no excise duty arose out of sale of said land and building or plant and machinery since excise dues arise only on manufacturing of excisable items — Also, appellant had not purchased entire unit as an on going concern — Hence, held, auction-purchaser is not liable to discharge outstanding dues of Cen-*

tral excise — Central Excise Act, 1944, S. 11 proviso (w.e.f. 10-9-2004) — Central Excise Rules, 1944, R. 230(2) (Paras 16 to 23). *Rana Girders Ltd.* v. *Union of India*, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130: AIR 2013 SC 3422: (2013) 295 ELT 12.

Bench Strength **2**. Coram: *Anil R. Dave* and **A.K. Sikri**, JJ. [Date of decision: 16-8-2013]

State of Karnataka v. Shreyas Papers (P) Ltd., (2006) 1 SCC 615, applied

Macson Marbles (P) Ltd. v. Union of India, (2008) 15 SCC 481; Union of India v. SICOM Ltd., (2009) 2 SCC 121, explained and applied

Rana Girders Ltd. v. Union of India, Writ Tax No. 383 of 2005, order dated 25-11-2011 (All), reversed

(b) Debt/Debtor/Loan

— "Debt or other liability" — Meaning of *See* 'Negotiable Instruments Act, 1881', S. 138 Expln., (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138

(c) Debts Recovery Tribunal

See also COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Generally, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

— Adjournment *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19, 20, 21 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

— DRT and DRAT shall not be bound by Code of Civil Procedure, but shall be guided by principles of natural justice and subject to rules framed *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 19 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

— Interference in writ jurisdiction — When permissible *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 18 and 20, (2013) 10 SCC 652: (2014) 1 SCC (Civ) 79

— Jurisdiction — Scope *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4), 17 and 34, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444

— Jurisdiction and powers, held, are restricted to those conferred by the statute *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19(25), 20, 21 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

(d) Guarantor/Surety

See also 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Contingent guarantee — Invocation of — When valid *See* CONTRACT AND SPECIFIC RELIEF — 'Specific Contracts' — Guarantee/Surety, (2014) 1 SCC 625: (2014) 1 SCC (Civ) 502

(e) Hypothecation/Lien

See GOVERNMENT CONTRACTS/TENDERS — 'Lien of employer over contractual amounts', (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

(f) Moneylending

Bengal Money-Lenders Act, 1940 (10 of 1940)

— S. 36 *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 16(c), (2014) 11 SCC 605: (2014) 4 SCC (Civ) 192

(g) Priority of debts and dues

See 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, S. 29, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Ss. 46-B and 29, (2013) 10 SCC 638: (2014) 1 SCC (Civ) 64

— First charge/Overriding charge for recovery of sales tax dues created by statute *See* (2013) 14 SCC 619: (2014) 5 SCC (Civ) 681

— Tax arrears vis-à-vis secured creditor — Tax statute if creates a first/overriding charge *See* 'Debt, Debt Recovery and Relief' — Crown Debt/Debt owed to State/Tax arrears, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

(h) Recovery of Debts Due to Banks and Financial Institutions Act, 1993

[400] — Ss. 17, 19, 20, 21 and 22 — Scope and purpose — Dilatory tactics and frequent adjournments — Impermissibility of — *Held, grant of adjournments should be an exception and not to be granted in a routine and mechanical manner since object of the Act is for speedy recovery of dues to bank — DRT and DRAT are expected to act quickly considering gravity of the issue and foil attempts of the ingenious litigant to take recourse to dilatory tactics — DRT and DRAT shall not delay matters as it would frustrate purpose of the legislation — They are specialised institutions with expertise and conferred jurisdiction to decide the issue in speedy manner so that larger public interest does not suffer. Standard Chartered Bank* v. *Dharminder Bhohi*, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243: (2013) 101 ALR 465: (2013) 132 AIC 208.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

[401] — Ss. 17, 19(25), 20, 21 and 22 — Power and Jurisdiction of Tribunals (DRT and DRAT) — DRAT granting liberty to auction-purchaser of secured asset to initiate action against creditor Bank for any omission — Held, was beyond jurisdiction and powers of DRAT — *Tribunals, reiterated, are conferred with specific jurisdiction by special legislations to exercise a particular*

power in a particular manner as provided under the Act concerned — They do not have inherent powers — Thus, tribunals cannot travel beyond specific powers conferred upon them by statute concerned and assume role of a court of different nature that can grant a particular relief to parties before it — Words in S. 19(25) of RDDB Act, 1993 that "pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure ends of justice", held, imply that DRT and DRAT are required to function within statutory parameters only — DRAT took about 5 yrs' time to decide appeal against order of DRT and disposed of appeal by a crisp order permitting debtor to compromise with auction-purchaser not to insist on auction sale, to which Bank was not a party, and also granted liberty to auction-purchaser to initiate action against Bank for any omission committed by it — Legality — Held, jurisdiction of tribunals is confined only to powers conferred on it by statute and they do not have any inherent powers — Tribunals are required to decide only those issues that come within their own domain — Hence, held, DRAT exceeded its jurisdiction by considering submission made by auction-purchaser and granted liberty to her to initiate action against Bank for omissions committed by it — Such a direction has no sanction of law being bereft of jurisdiction, and on facts unwarranted — Furthermore since rest of the order of DRAT, other than the abovesaid offending observation had been complied with (which permitted borrower to recover property from auction-purchaser after compensating auction-purchaser and paying all dues of the Bank), and the same had not been challenged by auction-purchaser either before High Court or Supreme Court, and borrower had since transferred the property to a third person, quietus given to matter and prayer for rehearing of appeal before DRAT, rejected — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(2), 17 and 18 — Constitution of India, Art. 136. Standard Chartered Bank v. *Dharminder Bhohi*, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243: (2013) 101 ALR 465: (2013) 132 AIC 208.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

Standard Chartered Bank v. Dharminder Bhohi, WP (C) No. 4694 of 2010, decided on 16-7-2010 (Del), reversed

[402] — Ss. 18 and 20 — Interference of High Court in matters of recovery of dues in its writ jurisdiction — When proper — Powers of High Court under Art. 226 of Constitution, held, cannot be invoked unless there is statutory violation resulting in prejudice to party or where such proceedings or action is wholly arbitrary, unreasonable and unfair — *The present case not being such a case, Single Judge High Court erred in interfering and Division Bench of High Court rightly reversed such order of Single Judge — IAs filed by petitioner debtor/borrower for extracts of accounts and documents rejected by Debt Recovery Tribunal (DRT) on ground that intention of petitioner (appellant herein) was only to delay proceedings — While Single Judge of High Court allowed writ petition seeking production of documents, Division Bench of High Court set aside the said order holding that alternative remedy available under S. 20 of RDDB Act not exhausted by petitioner — Sustainability — Held, when specific remedy is available to aggrieved party, High Court in exercise of its jurisdiction under Art. 226 of Constitution, is not justified in interfering with orders of DRT to examine correctness of rejection of applications — In instant case, RDDB Act provides for a mechanism by appeal against orders of DRT to Appellate Tribunal — Further, it is not the case of petitioner that by rejecting his applications, DRT had violated any statutory provision — Hence, held, Single Judge of High Court was not justified in deciding case on merits while exercising jurisdiction under Art. 226 of Constitution — Further held, if correctness of otherwise of each and every interim order passed by DRT is to be tested in a writ court, it will defeat object and purpose of establishing such tribunal — Constitution of India, Art. 226* (Paras 9 to 11 and 6). *T.P. Vishnu Kumar* v. *Canara Bank*, (2013) 10 SCC 652: (2014) 1 SCC (Civ) 79: (2013) 97 ALR 753: (2013) 2 LW 575: (2013) 124 AIC 106: (2014) 1 MPLJ 626: (2014) 2 Mah LJ 436: (2013) 2 Cal LJ 36.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 11-2-2013]

Canara Bank v. T.P. Vishnu Kumar, WAs Nos. 559-61 of 2009 order dated 4-9-2012 (Mad), affirmed

[403] — Ss. 19 and 22 — DRT and DRAT shall not be bound by Code of Civil Procedure, but shall be guided by principles of natural justice and subject to rules framed — *DRT and DRAT are conferred with powers to regulate their own procedure since very purpose of their establishment is to expedite disposal of applications and appeals before them. Standard Chartered Bank* v. *Dharminder Bhohi*, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243: (2013) 101 ALR 465: (2013) 132 AIC 208.

Bench Strength 2. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

— **S. 29** *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 37, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 37, 35 and 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 37 r/w S. 35, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[404] — S. 29 — Scope — Held, S. 29 is an enabling provision — *By virtue of S. 29, mode and method of recovery of income tax dues resorted to under Schs. II and III to Income Tax Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962 have to be followed for recovery of debts due under RDDB Act, 1993 and SARFAESI Act, 2002 — Transfer of Property Act, 1882, Ss. 69 and 69-A — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 35 and 37 — Income Tax Act, 1961, Schs. II and III. Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength 2. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

(i) Recovery of Debts/Non-Performing Assets (NPAs)/Loans/Recovery of loan

— Interference in writ jurisdiction — When permissible *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 18 and 20, (2013) 10 SCC 652: (2014) 1 SCC (Civ) 79

— Sale of secured asset — Locus standi to challenge, before DRT — Co-owner *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4), 17 and 34, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444

(j) Remedies/Relief

— Interference in writ jurisdiction — When permissible *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 18 and 20, (2013) 10 SCC 652: (2014) 1 SCC (Civ) 79

(k) Sale of debtor's property

See 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 13 and 37, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 13(3-A), 13(2) and 17, (2014) 5 SCC 762: (2014) 3 SCC (Civ) 336

— Ss. 37, 35 and 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Security Interest (Enforcement) Rules, 2002 — Rr. 8 and 9, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304

— R. 8(3), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Rr. 8(6) proviso and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— State Financial Corporations Act, 1951 — S. 29, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

— Prior lease binding secured asset *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Ss. 17(1), 13 and 14, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 65-A, 105, 109 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Ss. 111, 109, 65-A and 105, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Prior rent-controlled tenancy on secured asset *See* RENT CONTROL AND EVICTION — 'Maharashtra Rent Control Act, 1999 (18 of 2000)', S. 33, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Sale of secured asset — Locus standi to challenge, before DRT — Co-owner *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4), 17 and 34, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444

— Sale or transfer of secured asset by secured creditor under SARFAESI Act so as to transfer the asset free from incumbrance(s) to transferee — Entitlement to benefit of S. 13(6) SARFAESI Act — Necessity of obtaining possession of secured asset prior to any such sale or transfer *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 5, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Tax arrears vis-à-vis secured creditor — Tax statute if creates a first/overriding charge *See* 'Debt, Debt Recovery and Relief' — Crown Debt/Debt owed to State/Tax arrears, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

(l) Secured debt/Security/Secured creditor

See also DEBT, FINANCIAL AND MONETARY LAWS — '3.(za) Secured debt/Security', pp. 337 et seq. in **Vol. 29**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

See 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Security Interest (Enforcement) Rules, 2002, R. 8(3), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— State Financial Corporations Act, 1951, S. 29, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Ss. 46-B and 29, (2013) 10 SCC 638: (2014) 1 SCC (Civ) 64

See also PROPERTY LAW — 'Common law principles', (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— 'Transfer of Property Act, 1882', S. 60, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— First charge/Overriding charge for recovery of sales tax dues created by statute *See* (2013) 14 SCC 619: (2014) 5 SCC (Civ) 681

— Prior lease binding secured asset *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Ss. 17(1), 13 and 14, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 65-A, 105, 109 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Prior rent-controlled tenancy on secured asset *See* RENT CONTROL AND EVICTION — 'Maharashtra Rent Control Act, 1999 (18 of 2000)', S. 33, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Sale or transfer of secured asset by secured creditor under SARFAESI Act so as to transfer the asset free from incumbrance(s) to transferee — Entitlement to benefit of S. 13(6) SARFAESI Act — Necessity of obtaining possession of secured asset prior to any such sale or transfer *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 5, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Tax arrears vis-à-vis secured creditor — Tax statute if creates a first/overriding charge *See* 'Debt, Debt Recovery and Relief' — Crown Debt/Debt owed to State/Tax arrears, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

(m) Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

[405] — **Objects and reasons — Requirement of speedy disposal of application and appeal — Restated** (Paras 17 to 22). *Standard Chartered Bank* v. *Dharminder Bhohi*, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243: (2013) 101 ALR 465: (2013) 132 AIC 208.

Bench Strength 2. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

— Ss. 2(f) and 13 *See* 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 2(zc) & (zf) and 5 *See* S. 13

— S. 13 *See* S. 17(1)

See also 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304

— R. 8(3), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also PROPERTY LAW — 'Transfer of Property Act, 1882', S. 60, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[406] — **S. 13 — Private sale of immovable secured assets conducted by secured creditor — Absence of any agreement in writing between respondent borrowers and secured creditor to effect the sale by private treaty as required by R. 8(8) of 2002 Rules — No notice as to date and time by which said sale was to be effected, given to borrowers as per R. 9 — Such sale effected in favour of appellants being violative of S. 13 of SARFAESI Act, 2002 and Rr. 8 and 9 of 2002 Rules, held, was null and void — Hence, set aside** — *Bank directed to refund entire proceeds of sale consideration deposited, together with accrued interest — Appellants to deliver possession of property purchased under said sale to respondent borrowers on receipt of entire amount due from the borrowers — Since Bank accepted payment made to it by borrowers pursuant to order of Single Judge of High Court (which indicated that dues of Bank would stand settled after said payment) and no writ appeal preferred by Bank against that order, held, possession of property to be delivered to borrowers with no further liability towards the Bank — Constitution of India, Art. 300-A — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Transfer of Property Act, 1882, Ss. 60, 69 and 69-A*

The provision contained in Section 13(8) of the SARFAESI Act, 2002 is specifically for the protection of the borrowers inasmuch as, ownership of the secured assets is a constitutional right vested in the borrowers and protected under Article 300-A of the Constitution of India. Therefore, the secured creditor as a trustee of the secured asset cannot deal with the same in any manner it likes and such an asset can be disposed of only in the manner prescribed in

the SARFAESI Act, 2002. Therefore, the creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected in order to provide the required opportunity to the borrower to take all possible steps for retrieving his property. Such a notice is also necessary to ensure that the process of sale will ensure that the secured assets will be sold to provide maximum benefit to the borrowers. The notice is also necessary to ensure that the secured creditor or anyone on its behalf is not allowed to exploit the situation by virtue of proceedings initiated under the SARFAESI Act, 2002. Thus, any sale effected without complying with Rules 8 and 9 of the 2002 Rules would be unconstitutional and, therefore, *null and void*. (Paras 12 to 15)

Furthermore, in the present case, there is an additional reason for declaring that the sale in favour of the appellant was a nullity. Rule 8(8) provides that sale by any method other than public auction or public tender, shall be on such terms as may be settled between the parties in writing. (Para 16)

In the present case, on 8-12-2006 Respondent 3 Bank gave approval for private sale of the immovable secured assets concerned to the appellants and for issue of sale certificate. On the very same date, the secured assets were sold in favour of the appellants. But, there were no terms settled in writing between the borrowers (i.e. Respondents 1 and 2) and the Bank (i.e. Respondent 3) that the sale can be effected by private treaty. In fact, the borrowers were not even called to the joint meeting held between the Bank and the Company through which the sale was effected. Therefore, the sale in question is *null and void* being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the 2002 Rules. Thus, the sale effected in favour of the appellants is liable to be set aside. (Paras 5 and 17 to 19, 28 and 29). *J. Rajiv Subramaniyan* v. *Pandiyas*, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295: AIR 2014 SC 1710: (2014) 4 MPLJ 270: (2014) 186 Comp Cas 73: (2014) 2 CTC 323: (2014) 6 Mah LJ 22: (2014) 104 ALR 177: (2014) 137 AIC 187: (2014) 4 LW 590.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 14-3-2014]

Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610, applied

J. Rajiv Subramaniyan v. Pandiyas, (2011) 3 LW 808: AIR 2012 Mad 12; Pandiyas v. SBI, WP (MD) No. 325 of 2007, order dated 21-2-2011 (Mad), affirmed

[407] — S. 13 — Sale of immovable secured assets — Duty of secured creditors in relation to — Held, secured creditors must take bona fide measures to ensure that there is maximum benefit to borrowers concerned from such sale — *Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Transfer of Property Act, 1882, Ss. 60 and 69 — Trusts Act, 1882, Ss. 90 and 88*

Generally, proceedings under the SARFAESI Act, 2002 against the borrowers are initiated only when the borrower is in dire straits. The provisions of the SARFAESI Act, 2002 and the Security Interest (Enforcement) Rules, 2002 have been enacted to ensure that the secured asset is not *sold for a song*. It is *expected* that all the banks and financial institutions which resort to the extreme measures under the SARFAESI Act, 2002 for sale of the secured assets to ensure that such sale of the asset provides maximum benefit to the borrower by the sale of such asset. Therefore, the secured creditors are expected to take bona fide measures to ensure that there is maximum yield from such secured assets for the borrowers. In the present case, it has been pointed out that sale consideration is only Rs 10,000 over the reserve price whereas the property was worth much more. However, the Court herein would not go into the said question as the sale is *null and void* being in violation of the provision of Section 13 of the SARFAESI Act, 2002 and Rules 8 and 9 of the 2002 Rules. (Para 18). *J. Rajiv Subramaniyan* v. *Pandiyas*, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295: AIR 2014 SC 1710: (2014) 4 MPLJ 270: (2014) 186 Comp Cas 73: (2014) 2 CTC 323: (2014) 6 Mah LJ 22: (2014) 104 ALR 177: (2014) 137 AIC 187: (2014) 4 LW 590.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 14-3-2014]

[408] — S. 13 — Sale of secured asset by secured creditor — Strict compliance with prescribed procedure — Mandatory requirement of — Principles reiterated — *Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9. J. Rajiv Subramaniyan* v. *Pandiyas*, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295: AIR 2014 SC 1710: (2014) 4 MPLJ 270: (2014) 186 Comp Cas 73: (2014) 2 CTC 323: (2014) 6 Mah LJ 22: (2014) 104 ALR 177: (2014) 137 AIC 187: (2014) 4 LW 590.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 14-3-2014]

Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610, applied

J. Rajiv Subramaniyan v. Pandiyas, (2011) 3 LW 808: AIR 2012 Mad 12; Pandiyas v. SBI, WP (MD) No. 325 of 2007, order dated 21-2-2011 (Mad), affirmed

Clarified, harmonised and applied in Vasu P. Shetty v. Hotel Vandana Palace, (2014) 5 SCC 660 at pp. 669-674

[409] — Ss. 13 and 2(zf) & (zc) — Enforcement of security interest — Exercise of power by secured creditor — Conditions on exercise of such power — *Held, enforcement of security interest in a secured asset by creditor should strictly be in conformity with provisions of SARFAESI Act, 2002 and 2002 Rules — Wide powers of secured creditor under SARFAESI Act, 2002 and 2002 Rules cannot be exercised arbitrarily and whimsically to utter disadvantage of borrower — Secured creditor as a trustee cannot deal with entrusted property (secured asset) in any manner it likes and secured property can be disposed of only in the manner prescribed in SARFAESI Act, 2002 and 2002 Rules — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Official Trustees Act, 1913, S. 7 — Constitution of India, Arts. 300-A and 14 — Transfer of Property Act, 1882, Ss. 60, 69 and 69-A — Trusts Act, 1882, Ss. 90 and 88*

An important feature to be noted in Section 13(1) of SARFAESI Act, 2002 is that a free hand is given to the secured creditor for the purpose of enforcing any security interest created in favour of secured creditor, without the intervention of the court or tribunal. The only other relevant aspect contained in Section 13(1) is that such enforcement should be in accordance with the provisions of the SARFAESI Act, 2002. A reading of Section 13(1), therefore, is clear to the effect that while on the one hand any secured creditor may be entitled to enforce the secured asset created in its favour on its own without resorting to any court proceedings or approaching the Tribunal, such enforcement should be in conformity with the other provisions of the SARFAESI Act, 2002. (Para 27)

A plain reading of Section 13(8) of the SARFAESI Act, 2002 would show that a borrower can tender to the secured creditor the dues together with all costs, charges and expenses incurred by the secured creditor at any time before the date fixed for sale or transfer. In the event of such tender once made as stipulated in Section 13(8), the mandate is that the secured asset should not be sold or transferred by the secured creditor. It is further reinforced to the effect that no further step should also be taken by the secured creditor for transfer or sale of the secured asset. When the stipulations contained in Section 13(8) of SARFAESI Act, 2002 are analysed in depth, it is found that there is a valuable right recognised and asserted in favour of the borrower, who is the owner of the secured asset and who is extended an opportunity to take all efforts to stop the sale or transfer till the last minute before which the said sale or transfer is to be effected. Having regard to such a valuable right of a debtor having been embedded in Section 13(8) of SARFAESI Act, 2002, it will have to be stated in uncontroverted terms that the said provision has been engrafted in the SARFAESI Act, 2002 primarily with a view to protect the rights of a borrower, inasmuch as, such an ownership right is a constitutional right protected under Article 300-A of the Constitution, which mandates that no person shall be deprived of his property save by authority of law. (Paras 29.1 and 29.2)

Therefore, by virtue of the stipulations contained under the provisions of the SARFAESI Act, 2002, in particular, Section 13(8), any sale or transfer of a secured asset, cannot take place without duly informing the borrower of the time and date of such sale or transfer in order to enable the borrower to tender the dues of the secured creditor with all costs, charges and expenses and any such sale or transfer effected without complying with the said statutory requirement would be a constitutional violation and nullify the ultimate sale. (Para 30)

Reading Rule 8(6) and Rule 9(1) of the 2002 Rules together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) of 2002 Rules contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, not only should the publication in newspaper provide for 30 days' clear notice, but since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to Rule 8(6), 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act, 2002. (Para 31)

Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1) of the 2002 Rules which has got a twin objective to be achieved. In the first place, by virtue of the stipulation contained in Section 13(8) of the SARFAESI Act, 2002 read along with Rules 8(6) and 9(1) of 2002 Rules, the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues

of the secured creditor before that date and time. Secondly, when such a secured asset is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since the proviso to Rule 8(6) of 2002 Rules also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question. (Paras 33 to 33.2)

The paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed. Therefore, the secured creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected. (Paras 33.3 and 29.4)

Therefore, de hors the extent of borrowing made and whatever costs, charges were incurred by the secured creditor in respect of such borrowings, when it comes to the question of realising the dues by bringing the property entrusted with the secured creditor for sale to realise money advanced without approaching any court or tribunal, the secured creditor as a trustee cannot deal with the said property in any manner it likes and same can be disposed of only in the manner prescribed in the SARFAESI Act, 2002 and the 2002 Rules. (Paras 29.3 and 43)

Further, Rule 8(3) of the 2002 Rules really casts a much more onerous responsibility on the secured creditor once possession is actually taken by its authorised officer. Under Rule 8(3), the property taken possession of by the secured creditor should be kept in its custody or in the custody of a person authorised or appointed by it and it is stipulated that such person holding possession should take as much care of the property in its custody as an owner of ordinary prudence would under similar circumstances take care of such property. The underlying purport of such a requirement is to ensure that under no circumstances, the rights of the owner till such right is transferred in the manner known to law is infringed. Merely because the provisions of the SARFAESI Act, 2002 and the 2002 Rules enable the secured creditor to take possession of such an immovable property belonging to the owner and also empowers the secured creditor to deal with it by way of sale or transfer for the purpose of realising the secured debt of the borrower, it does not mean that such wide power can be exercised arbitrarily or whimsically to the utter disadvantage of the borrower. (Para 34)

Rule 8(4) of the 2002 Rules, governs all secured assets, movable or immovable and a further responsibility is created on the authorised officer to take steps for the preservation and protection of secured assets and for that purpose can even insure such assets, until they are sold or otherwise disposed of. Therefore, a reading of Rules 8 and 9 of 2002 Rules, in particular, Rule 8(1) to (4) and (6) and Rule 9(1) makes it clear that simply because a secured interest in a secured asset is created by the borrower in favour of the secured creditor, the said asset in the event of the same having become a non-performing asset cannot be dealt with in a light-hearted manner by way of sale or transfer or disposed of in a casual manner or by not adhering to the prescriptions contained under the SARFAESI Act, 2002 and the abovesaid 2002 Rules. (Para 35). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength 2. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

***Applied in** J. Rajiv Subramaniyan v. Pandiyas, (2014) 5 SCC 651*

— Ss. 13 and 14 *See also* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 111, 109, 65-A and 105, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

[410] — Ss. 13, 14, 5, 34, 35 and 37 — Sale or transfer of secured asset by secured creditor under SARFAESI Act so as to transfer the asset free from incumbrance(s) to transferee — Entitlement to benefit of S. 13(6) SARFAESI Act — Necessity of obtaining possession of secured asset prior to any such sale or transfer — *Secured asset in possession of lessee of borrower, where (i) lease is created prior to mortgage which created the secured asset, or (ii) lease is created after the mortgage vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower — Protection of possession of any such lessee unless lease is properly determined under S. 111 TPA — Held, as per S. 13(6) of 2002 Act, transferee of a secured*

*asset vide a transfer under SARFAESI Act obtains the secured asset free from incumbrance(s) only if the transfer was made after secured creditor had obtained possession — Thus, in case secured asset is in possession of lessee of mortgagor in either of the two cases (i) or (ii), above, unless lease is properly determined vide S. 111 TPA and possession is handed over to secured creditor prior to the transfer, any transferee of secured asset vide a transfer by secured creditor under SARFAESI Act would only obtain an interest subject to such a lease [***Ed.**: see also S. 5 of 2002 Act] — Transfer of Property Act, 1882, Ss. 7, 8 and 55(1)(g), 108(j), 105, 65-A, 109 & 111*

Section 14(1) of the SARFAESI Act also provides that if any of the secured asset(s) is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may take the assistance of the CMM or the DM. Where, therefore, such a request is made by the secured creditor and the CMM or the DM finds that the secured asset is in possession of a lessee of the borrower/mortgagor but the lease under which the lessee claims to be in possession of the secured asset stands determined in accordance with Section 111 TPA, the CMM or the DM may pass an order for delivery of possession of secured asset in favour of the secured creditor to enable the secured creditor to sell and transfer the same under the provisions of the SARFAESI Act. Section 13(6) of the SARFAESI Act provides that any transfer of a secured asset after taking possession of the secured asset by the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. Thus, for the purpose of transferring the secured asset [free from incumbrances as provided in Section 13(6)] and for realising the secured debt, the secured creditor will require the assistance of the CMM or the DM for taking possession of a secured asset from the lessee of the borrower/mortgagor where the lease stands determined by any of the modes mentioned in Section 111 TPA. (Para 26). *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

[**Ed.**: It would seem that if the sale or transfer of the secured asset is made under the SARFAESI Act, 2002 without the secured creditor having taken over possession, then the transferee would obtain the secured asset subject to incumbrances i.e. stand in the shoes of the secured creditor. It is to obtain the benefit of Section 13(6), SARFAESI Act, 2002 i.e. to obtain the secured asset free of incumbrances that possession would have to be taken by the secured creditor prior to the transfer. Section 5, SARFAESI Act, 2002 provides for the transfer of the secured asset *subject* to incumbrances.]

[411] — Ss. 13, 14, 34, 35 and 37 — Right of lessee of borrower in possession of secured asset, to retain possession thereof, upon initiation of action by secured creditor to obtain possession of such secured asset — Need for proper registered lease deed to retain possession beyond one year from date of commencement of the lease — Power of secured creditor or Chief Metropolitan Magistrate (CMM)/District Magistrate (DM) to take possession of secured asset from such lessee and hand over the same to secured creditor under S. 14 for possession by secured creditor — Extent to which SARFAESI Act overrides Transfer of Property Act, 1882 (TPA) vide S. 35 of SARFAESI Act — Duties of secured creditor and CMM/DM in such cases — Remedy of lessee concerned in case of dispossession — *Leases granted by borrowers/Lessees, classified into three classes: **Class (1)** Leases created prior to mortgage which created the secured asset; **Class (2)** Leases created after creation of the mortgage, vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower; and **Class (3)** Leases created after creation of the mortgage, vide S. 65-A TPA or otherwise, but after receipt of S. 13(2) SARFAESI Act notice by borrower — Detailed framework of law laid down on the above issues — **Leases falling in Classes (1) and (2)** — Held, such leases would not stand automatically determined upon action being initiated under S. 13/S. 14 of 2002 Act, and lessees in possession under such leases cannot be evicted by secured creditor or CMM/DM, unless and until the lease is validly terminated as per any of the modes specified in S. 111 TPA, including by surrender of lease by lessee to secured creditor or CMM/DM — Further, to retain possession under such a lease beyond a period of one year from date on which such lease commenced, vide mandate of S. 107 TPA, such lessee would have to produce proof of execution of a proper registered lease deed to secured creditor or CMM/DM — **Leases falling in Class (3)** — Held, such leases are invalid, since S. 65-A TPA is inconsistent with S. 13(13) of 2002 Act, and vide S. 35 of 2002 Act, S. 13(13) of 2002 Act would prevail over S. 65-A TPA to that extent — Hence, lessees in possession under such leases can be immediately evicted by secured creditor or CMM/DM — **Procedure to be followed by secured***

creditor or CMM/DM to obtain possession from lessee of borrower — *Thus, when secured creditor moves CMM/DM for assistance to take possession of secured asset which is in possession of a lessee of mortgagor/borrower, the secured creditor must state in affidavit accompanying application to CMM/DM as to which class i.e.* **Class (1), (2) or (3)** *the lease in question falls under — Equally, once lessee of mortgagor/borrower in possession of secured asset has notice of possession proceedings having been initiated by secured creditor [vide service of notice under Ss. 8(1) and (2) of 2002 Rules or otherwise] he might surrender the lease, or, to protect his possession he would have to produce proof before secured creditor or before CMM/DM that he is a lessee who falls in* **Class (1) or (2)** *— DMM/CM has to then give a notice and opportunity of hearing to person in possession of secured asset claiming to be a* **Class (1) or (2)** *lessee of mortgagor/borrower, as well as to secured creditor, consistent with principles of natural justice, and then take a decision — If the lease falls in* **Class (1) or (2)**, *possession cannot be delivered to secured creditor until lease is validly determined vide any of the modes specified in S. 111 TPA — However,* **Class (1) or (2)** *lessee would be liable to pay the rent directly to the secured creditor vide S. 13(4)(d) of 2002 Act — If the lease falls in* **Class (3)**, *or there is no valid lease, or the lease has been validly determined, then such lessee/person would be liable for immediate eviction and delivery of possession to secured creditor by CMM/DM —* ***Remedy of lessee in case of dispossession*** — *There is no remedy available to lessee of borrower under S. 17 of 2002 Act before DRT, in case of dispossession by secured creditor or CMM/DM — Remedy of such lessee against decision of CMM/DM under S. 14 of 2002 Act handing over possession to secured creditor lies under Arts. 226 and 227 of Constitution — Transfer of Property Act, 1882, Ss. 105 to 107, 109, 7, 8 and 65-A — Security Interest (Enforcement) Rules, 2002, Rr. 8(1) and (2)*

Disposing of the appeals,

Held :

A "secured asset" has been defined in Section 2(*zc*) of the SARFAESI Act to mean the property on which the security interest is created. In case of an immovable property, a security interest is created in a secured asset by way of a mortgage in favour of the secured creditor. There may be cases where before the mortgage is created in respect of an immovable property, the borrower had already leased out the immovable property in favour of a lessee either as the owner or as a person competent or authorised to transfer the immovable property in accordance with Section 7 of the Transfer of Property Act, 1882 (TPA). If such a lease is made, by virtue of Section 8 TPA, the lessee will have the right to enjoy the leased property in accordance with the terms and condition of the lease irrespective of whether a subsequent mortgagee of the immovable property has knowledge of such a lease or not. (Para 16)

After the mortgage of an immovable property is created by the borrower in favour of a secured creditor, the right of the borrower to lease a mortgaged property is regulated by Section 65-A TPA. Section 65-A(1) TPA states that the mortgagor has the power to make lease of a mortgaged property while he is in lawful possession of the same subject to the provisions of Section 65-A(2) TPA and such lease is binding on the mortgagee. Section 65-A(3) further provides that such a power is available with the mortgagor to make a lease of the mortgaged property only if and as far as a contrary intention is not expressed in the mortgage deed. Thus, so long as the mortgage deed does not prohibit a mortgagor from making a lease of the mortgaged property and so long as the lease satisfies the requirements of Section 65-A(2), a lease made by a borrower as a mortgagor will not only be valid but is also binding on the secured creditor as a mortgagee. (Para 17)

Section 35 of the SARFAESI Act provides that the provisions of the Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Thus, if there is any provision in the SARFAESI Act and if there is any provision in any other law which is inconsistent therewith, the provision of the SARFAESI Act will have effect and not the provision of any other law. (Para 18)

The only section in the SARFAESI Act which confers a statutory right on the secured creditor to take possession of the secured asset and enforce the secured asset for the realisation of the secured debt is Section 13. Section 13(4) of the SARFAESI Act provides that in case the borrower fails to discharge his liability in full within sixty days from the date of notice provided in Section 13(2) of the SARFAESI Act, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt. One of the measures mentioned in Section 13(4)(*a*) of the SARFAESI Act is to take possession of the secured assets of the borrower including the right to transfer by way of lease. Where, however, the lawful possession of the secured asset is not with the borrower, but with the

lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined. There is, however, no mention in Section 13(4) of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand determined on the secured creditor deciding to take any of the measures mentioned in Section 13 of the SARFAESI Act. (Paras 19 to 21)

As per Sections 105 and 111 TPA, so long as a lease of an immovable property does not get determined, the lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided in Article 300-A of the Constitution. There is no provision in Section 13 of the SARFAESI Act that a lease in respect of a secured asset shall stand determined when the secured creditor decides to take the measures mentioned in Section 13 of the SARFAESI Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals. (Para 22)

Further, as per Section 14(1) of the SARFAESI Act, only if possession of the secured asset is required to be taken under the provisions of the SARFAESI Act, can the secured creditor move the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) for assistance to take possession of the secured asset. Section 13 of the SARFAESI Act does not provide that the lease in respect of a secured asset will get determined when the secured creditor decides to take the measures in Section 13 of the SARFAESI Act. Hence, possession of the secured asset from a lessee in lawful possession under a valid lease is not required to be taken under the provisions of the SARFAESI Act and the CMM or the DM, therefore, does not have any power under Section 14 of the SARFAESI Act to take possession of the secured asset from such a lessee and hand over the same to the secured creditor. (Para 25)

Section 13(13) of the SARFAESI Act, however, provides that after receipt of notice referred to in Section 13(2) of the SARFAESI Act, no borrower shall lease any of his secured assets referred to in the notice, without the prior written consent of the secured creditor. This provision in Section 13(13) of the SARFAESI Act and the provisions of TPA enabling the borrower or the mortgagor to make a lease after a mortgage has been entered into, are inconsistent with each other. Hence, Section 13(13) of the SARFAESI Act will override the provisions of Section 65-A TPA by virtue of Section 35 of the SARFAESI Act to this extent, and a lease of a secured asset made by the mortgagor/borrower after he receives the notice under Section 13(2) of the SARFAESI Act from the secured creditor intending to enforce that secured asset will not be a valid lease. (Para 21)

When, therefore, a secured creditor moves the CMM or the DM for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured asset is not in possession of a lessee under a valid lease made prior to creation of the mortgage by the borrower or made in accordance with Section 65-A TPA prior to receipt of a notice under Section 13(2) of the SARFAESI Act by the borrower. (Para 25)

Even in such cases where the secured creditor is unable to take possession of the secured asset after expiry of the period of 60 days of the notice to the borrower of the intention of the secured creditor to enforce the secured asset to realise the secured debt, as possession is with a lessee under a valid lease, the secured creditor will have the right to receive any money due or which may become due, including rent, from the lessee to the borrower. This is clear from Section 13(4)(*d*) of the SARFAESI Act, which provides that in case the borrower fails to discharge his liability in full within the notice period, the secured creditor may require, at any time by notice in writing, any person who has acquired any of the assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt. (Para 25)

Section 14(1) of the SARFAESI Act also provides that if any of the secured asset(s) is required to be sold or transferred by the secured creditor under the provisions of the SARFAESI Act, the secured creditor may take the assistance of the CMM or the DM. Where, therefore, such a request is made by the secured creditor and the CMM or the DM finds that the secured asset is in possession of a lessee of the borrower/mortgagor but the lease under which the lessee claims to be in possession of the secured asset stands determined in accordance with Section 111 TPA, the CMM or the DM may pass an order for delivery of possession of secured asset in favour of the secured creditor to enable the secured creditor to sell and transfer the same under the provisions of the SARFAESI Act. Section 13(6) of the SARFAESI Act provides that any transfer of a secured asset after taking possession of the secured asset by the secured creditor shall vest in the trans-

feree all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset. Thus, for the purpose of transferring the secured asset [free from incumbrances as provided in Section 13(6)] and for realising the secured debt, the secured creditor will require the assistance of the CMM or the DM for taking possession of a secured asset from the lessee of the borrower/mortgagor where the lease stands determined by any of the modes mentioned in Section 111 TPA. (Para 26)

Where the secured asset is immovable property, Rules 8(1) and (2) of the Security Interest (Enforcement) Rules, 2002 (2002 Rules) would show that a possession notice will have to be affixed on the outer door of the premises or at the conspicuous place of the property and also published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspapers, one in vernacular language having sufficient circulation in that locality, by the authorised officer. At this stage, the lessee of the borrower will have notice of the secured creditor making efforts to take possession of the secured assets of the borrower. When, therefore, a lessee of the borrower/mortgagor becomes aware of the possession being taken by the secured creditor, in respect of the secured asset in respect of which he is the lessee, from the possession notice which is delivered, affixed or published in Rules 8(1) and (2) of the 2002 Rules, he may either surrender possession or resist the attempt of the secured creditor to take the possession of the secured asset by producing before the authorised officer proof that he was inducted as a lessee prior to the creation of the mortgage or that he is a lessee under the mortgagor in accordance with the provisions of Section 65-A TPA entered into prior to the receipt of the Section 13(2) notice by the borrower, and that the lease does not stand determined in accordance with Section 111 TPA. (Paras 27 and 28)

If the lessee surrenders possession, the lease, even if valid, gets determined in accordance with Section 111(*f*) TPA, but if he resists the attempt of the secured creditor to take possession, the authorised officer cannot evict the lessee by force but has to file an application before the CMM or the DM under Section 14 of the SARFAESI Act and state in the affidavit accompanying the application, the name and address of the person claiming to be the lessee. When such an application is filed, the CMM or the DM will have to give a notice and give an opportunity of hearing to the person claiming to be the lessee as well as to the secured creditor, consistent with the principles of natural justice, and then take a decision. If the CMM or DM is satisfied that there is a valid lease created before the mortgage or there is a valid lease created after the mortgage in accordance with the requirements of Section 65-A TPA entered into prior to the receipt of the Section 13(2) notice by the borrower, and that the lease has not been determined in accordance with the provisions of Section 111 TPA, he cannot pass an order for delivering possession of the secured asset to the secured creditor. But in case he comes to the conclusion that there is in fact no valid lease made either before creation of the mortgage or after creation of the mortgage satisfying the requirements of Section 65-A TPA or that even though there was a valid lease, the lease stands determined in accordance with Section 111 TPA, he can pass an order for delivering possession of the secured asset to the secured creditor. (Para 28)

As per the mandate of Section 107 TPA if the lessee of the mortgagor claims that it is entitled to possession of a secured asset for any term exceeding one year from the date of the lease made in his favour, he has to produce proof of execution of a registered instrument in his favour by the lessor. Where he does not produce proof of execution of a registered instrument in his favour and instead relies on an unregistered instrument or oral agreement accompanied by delivery of possession, the CMM or the DM, as the case may be, will have to come to the conclusion that he is not entitled to the possession of the secured asset for more than a year from the date of the instrument or from the date of delivery of possession in his favour by the landlord. (Para 36)

The words "any person" in Section 17(1) of the SARFAESI Act are wide enough to include a lessee of the mortgagor/borrower also. It is also possible to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of Rule 8 of the 2002 Rules, such a lessee may file an application before DRT having jurisdiction in the matter for restoration of possession in case he is dispossessed of the secured asset. But Section 17(3) of the SARFAESI Act provides that DRT has powers to restore possession of the secured asset to the borrower only and not to any person such as a lessee of the borrower. Hence, even if DRT comes to the conclusion that any of the measures referred to in Section 13(4) of the SARFAESI Act taken by the secured creditor are not in accordance with the provisions of the SARFAESI Act, it cannot restore possession of the secured asset to the lessee of the

borrower. Where, therefore, DRT considers the application of the lessee and comes to the conclusion that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in accordance with the requirements of Section 65-A TPA and the lease was valid and binding on the mortgagee and the lease is yet to be determined, DRT will not have the power to restore possession of the secured asset to the lessee. Hence, there is no remedy available under Section 17 of the SARFAESI Act to the lessee of the borrower to protect his lawful possession under a valid lease. (Para 32)

Section 14(3) of the SARFAESI Act provides that no act of the CMM or the DM or any officer authorised by the CMM or DM done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the CMM or the DM and this decision cannot be challenged before any court or any authority. But the Supreme Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision, will not be a bar for the High Court or the Supreme Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. Therefore, the decision of the CMM or the DM can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the CMM or the DM, as the case may be, in accordance with settled principles of law. (Para 29)

A further question of law raised in these appeals is whether the tenants have remedies under the tenancy law concerned. In the State of Maharashtra, the Maharashtra Rent Control Act, 1999 (the 1999 Act) is in force. A reading of the second limb of Section 34 of the SARFAESI Act would show that no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act. Thus, when action is sought to be taken by the secured creditor under Section 13 of the SARFAESI Act or by the CMM or the DM under Section 14 of the SARFAESI Act, the court or the authority mentioned in Section 33 of the 1999 Act cannot grant an injunction to prevent such action by the secured creditor or by the CMM or the DM. Even otherwise, Section 33 of the 1999 Act vests jurisdiction in the courts named therein to decide disputes between the landlord and the tenant and not disputes between the secured creditor of the landlord and the tenant under a landlord who is a borrower in respect of the secured assets covered by the SARFAESI Act. (Para 35). *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

Transcore v. Union of India, (2008) 1 SCC 125: (2008) 1 SCC (Civ) 116, distinguished

International Asset Reconstruction Co. (P) Ltd. v. Union of India, (2011) 5 Bom LR 3080: AIR 2011 Bom 163, reversed

Trade Well v. Indian Bank, 2007 Cri LJ 2544 (Bom), disapproved

[**Ed.**: It would seem that if the sale or transfer of the secured asset is made under the SARFAESI Act, 2002 without the secured creditor having taken over possession, then the transferee would obtain the secured asset subject to incumbrances i.e. stand in the shoes of the secured creditor. It is to obtain the benefit of Section 13(6), SARFAESI Act, 2002 i.e. to obtain the secured asset free of incumbrances that possession would have to be taken by the secured creditor prior to the transfer. Section 5, SARFAESI Act, 2002 provides for the transfer of the secured asset *subject* to incumbrances.]

— Ss. 13, 35 and 37 *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[412] — Ss. 13 and 37 — Sale of secured asset by secured creditor under SARFAESI Act — Mandatory strict compliance with prescribed procedure — 30 days' clear notice to borrower of date of sale — Mandatory requirement of — Adjournment/Postponement of sale for period of more than one calendar month — No sale or transfer of secured asset to be made on any subsequent date without notifying borrower afresh with 30 days' clear individual notice of the fresh date of sale — Any sale or transfer of secured asset under SARFAESI Act in violation of any of the above mandatory requirements, held, would be invalid — *Provisions of R. 8 of 2002 Rules and R. 15, Sch. II Pt. I of Income Tax Act, 1961 by virtue of S. 29, RDDB Act, 1993 and S. 37, SARFAESI Act, 2002, held, have to be strictly followed in sale of secured asset under SARFAESI Act, 2002 — If sale properly notified after giving 30 days' clear notice to borrower does not take place as scheduled for reasons which cannot be solely attributable to borrower, secured creditor cannot effect sale or transfer of secured asset on any subsequent date by*

relying upon notification issued earlier — Such earlier notification would lapse — In present case, sale of secured asset was notified to take place on 25-9-2007 for which respondent guarantors had been informed only on 30-8-2007 — Hence, mandatory requirement of 30 days' clear notice to borrower under R. 8(6) of 2002 Rules was not fulfilled — Later also, sale did not take place on fixed date of 25-9-2007 due to court intervention and got adjourned by 6 weeks — Sale was not effected even after 6 weeks but was ultimately held after more than 3 months on 28-12-2007 — Respondent guarantors were informed only on 2-2-2008 about confirmation of sale in favour of appellant — Such sale, in absence of fresh notice to respondent guarantors prior to the sale giving 30 days' clear notice, held, invalid — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29 — Income Tax Act, 1961, Sch. II Pt. I R. 15 — Constitution of India, Art. 300-A — Transfer of Property Act, 1882, Ss. 69, 60 and 69-A

The respondent Bank (secured creditor) granted a credit facility of Rs 30 lakhs in favour of a company called *J*. Respondents 1 and 2 stood as guarantors and created a mortgage by deposit of title deeds (MDTD) of their property in favour of the respondent Bank (mortgaged property). When the transaction became a non-performing asset, the respondent Bank filed an application (OA) in the year 2002 for the recovery of its dues. On 20-2-2007, the respondent Bank took possession of the mortgaged property by invoking Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002), read along with Rules 8 and 9 of the Security Interest (Enforcement) Rules, 2002 (2002 Rules).

Respondents 1 and 2 filed a securitisation application (SA) before the Debts Recovery Tribunal (DRT) challenging the possession notice dated 20-2-2007 and also for restraining the respondent Bank from evicting them. The attempts for a one-time settlement between the parties failed and the respondent Bank notified the sale of mortgaged property to be held on 25-9-2007. On 23-8-2007, the respondent Bank gave a public notice of sale inviting tenders-cum-auction from the public. Respondents 1 and 2 were informed by the respondent Bank by its notice dated 30-8-2007, about the publication made on 23-8-2007.

Respondents 1 and 2 filed a writ petition challenging the proceedings initiated by the respondent Bank under the SARFAESI Act, 2002. The High Court after taking note of the pendency of both the OA as well as SA before the DRT, by its order dated 20-9-2007 directed the DRT to hear the parties and dispose of both the cases or at least the SA without any delay. The High Court also directed the respondent Bank to defer the sale scheduled to be held on 25-9-2007 by six weeks, by imposing a condition on Respondents 1 and 2 to deposit a sum of Rs 10 lakhs before the date of sale i.e. 25-9-2007. Respondents 1 and 2 had made the required deposit. The six week period expired by 10-11-2007, and even thereafter the sale did not take place. On 27-12-2007, the DRT passed orders in the SA filed by Respondents 1 and 2 and dismissed the said application. On the very next day i.e. on 28-12-2007, the respondent Bank accepted the bid of the appellant who offered a sum of Rs 1.27 crores and by 31-12-2007, the respondent Bank also confirmed the sale in favour of the appellant. Respondents 1 and 2 were intimated by the respondent Bank on 2-2-2008 about the confirmation of sale in favour of the appellant and also the receipt of the entire consideration from him.

Respondents 1 and 2 then filed a writ petition challenging the vires of the 2002 Rules on the ground that they violated their right of redemption by denying them adequate opportunity and time to repay the borrowed sum and the action of the respondent Bank in having acted surreptitiously in selling the property without informing them. The said writ petition was dismissed by the Single Judge of the High Court on the ground that Respondents 1 and 2 had got an alternative efficacious remedy available under the SARFAESI Act, 2002. As against this order, Respondents 1 and 2 filed a writ appeal. In the meantime, on 24-6-2009, the respondent Bank transferred the mortgaged property in favour of the appellant under a duly registered certificate of sale.

The Division Bench of the High Court by the impugned order dated 8-3-2010 took the view that the sale was not conducted by the respondent Bank in a fair and proper manner and same was not even informed to Respondents 1 and 2. The Division Bench of the High Court, therefore, set aside the sale executed in favour of the appellant by imposing a condition that Respondents 1 and 2 would furnish a demand draft of Rs 2 crores in favour of the appellant within a period of two months from the date of the order. It further held that if payment was not made, as directed, the sale in favour of the appellant would stand confirmed and the writ appeal would automatically stand dismissed.

Respondents 1 and 2 did not make the payment within the stipulated time and instead filed an application (IA No. 437 of 2010) in the writ appeal seeking a further six weeks' time to effect the payment. Allowing the application, the Division Bench of the High Court extended the time for payment till 20-6-2010 and permitted Respondent 8 (another buyer) to deposit Rs 2.03 crores with the respondent Bank by 19-6-2010. Subsequently, in IA No. 507 of 2010, the Division Bench after noting that the appellant had not withdrawn the amounts deposited with the respondent Bank by stating that he had approached the Supreme Court by way of a special leave petition and after finding that mere steps taken by the appellant for filing the SLP need not stand in the way of executing the sale deed in favour of Respondent 8 who had deposited the entire amount, allowed the said application and directed the respondent Bank to execute the sale deed in favour of Respondent 8 for the sale consideration of Rs 2.03 crores.

Against the final order of the Division Bench of the High Court in the writ appeal and also against the orders passed in IAs Nos. 437 and 507 of 2010, the appellant auction-purchaser had filed the present appeals.

Upholding the main order of the Division Bench of the High Court but setting aside the orders passed in IAs Nos. 437 and 507 of 2010,

Held :

A close reading of Section 37 of the SARFAESI Act, 2002 shows that the provisions of the SARFAESI Act, 2002 or the Rules framed thereunder will be in addition to the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDB Act, 1993). Section 35 of the SARFAESI Act, 2002 states that the provisions of the SARFAESI Act, 2002 will have overriding effect notwithstanding anything inconsistent contained in any other law for the time being in force. Therefore, reading Sections 35 and 37 of the SARFAESI Act, 2002 together, it will have to be held that in the event of any of the provisions of the RDDB Act, 1993 not being inconsistent with the provisions of the SARFAESI Act, 2002, the application of both the Acts, namely, the SARFAESI Act, 2002 and the RDDB Act, 1993, would be complementary to each other. (Para 45)

A reading of Section 37 of the SARFAESI Act, 2002 discloses that the application of the SARFAESI Act, 2002 will be in addition to and not in derogation of the provisions of the RDDB Act, 1993. In other words, it will not in any way nullify or annul or impair the effect of the provisions of the RDDB Act, 1993. The heading of Section 37 of the SARFAESI Act, 2002 also makes the position clear that application of other laws are not barred. The effect of Section 37 of the SARFAESI Act, 2002 would, therefore, be that in addition to the provisions contained under the SARFAESI Act, 2002, in respect of proceedings initiated under the said Act, it will be proper for a party to fall back upon the provisions of the other Acts mentioned in Section 37 of the SARFAESI Act, 2002, namely, the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities and Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, or any other law for the time being in force. (Para 46)

Thus, the application of the SARFAESI Act, 2002, in the present case, will be in addition to Section 29 of the RDDB Act, 1993. Once this position is clear, it can be held that whatever stipulations are contained in Section 29 of the RDDB Act, 1993 as regards the application of certain provisions of the Income Tax Act, 1961 in particular Schedule II Part I Rule 15 of the Income Tax Act, 1961 (IT Act, 1961) for effecting a sale or transfer would apply automatically. (Para 49)

Section 29 of the RDDB Act, 1993 is an enabling provision under which the Second and Third Schedules to the IT Act and the Income Tax (Certificate Proceedings) Rules, 1962 (1962 Rules) can be applied as far as possible with necessary modifications as if the provisions and the Rules are referable to the debt due, instead of the income tax due. Therefore, fictionally, by virtue of Section 29 of the RDDB Act, 1993 the mode and method by which a recovery of income tax can be resorted to under the Second and Third Schedules to the IT Act and the 1962 Rules have to be followed. (Paras 50 and 51)

From the reading of Rule 15 of the Schedule II Part I of the IT Act, 1961, it can be stated that the said Rule does not in any way conflict with either Section 13(8) of the SARFAESI Act, 2002 or Rules 8 and 9 of the 2002 Rules. Rule 15(1) of the Schedule II Part I of the IT Act, 1961 only deals with the discretion of the Tax Recovery Officer to adjourn the sale by recording his reasons for such adjournment. As far as Rule 15(2) is concerned, the same is clear to the effect that if a sale of immovable property is adjourned under Rule 15(1) for a longer period than one calendar month, a fresh proclamation of sale should be made unless the defaulter consents to waive it. In fact there is no provision relating to grant of adjournment or issuance of a fresh proclamation for effecting the sale after the

earlier date of sale was not adhered to in the SARFAESI Act, 2002. In such circumstances going by the prescription contained in Section 37 of the SARFAESI Act, 2002, as the conclusion is reached that the provision contained in Section 29 of the RDDB Act, 1993 will be in addition to and not in derogation of the provisions of the SARFAESI Act, 2002, the provisions contained in Rule 15 of the Schedule II Part I of the IT Act, 1961, which is applicable by virtue of the stipulation contained in Section 29 of the RDDB Act, 1993, whatever is stated in Rule 15(2) should be followed in a situation where a notice of sale notified as per Rules 8 and 9(1) of the 2002 Rules, read along with Section 13(8) of the SARFAESI Act, 2002, gets postponed. (Para 52)

It is, therefore, held that unless and until a clear 30 days' notice is given to the borrower, no sale or transfer can be resorted to by a secured creditor under the SARFAESI Act, 2002 and the 2002 Rules. In the event of any such sale properly notified after giving 30 days' clear notice to the borrower does not take place as scheduled for reasons which cannot be solely attributable to the borrower, the secured creditor cannot effect the sale or transfer of the secured asset on any subsequent date by relying upon the notification issued earlier. In other words, once the sale does not take place pursuant to a notice issued under Rules 8 and 9 of 2002 Rules, read along with Section 13(8) of the SARFAESI Act, 2002 for which the entire blame cannot be thrown on the borrower, it is imperative that for effecting the sale, the procedure prescribed above will have to be followed afresh, as the notice issued earlier would lapse. It is, therefore, imperative that for the sale to be effected under Section 13(8) of the SARFAESI Act, 2002, the procedure prescribed under Rule 8 read along with Rule 9(1) of the 2002 Rules has to be necessarily followed, inasmuch as that is the prescription of the law for effecting the sale. (Para 53)

In the present case, the initial sale was notified to take place on 25-9-2007. The paper publication was made on 23-8-2007 and Respondents 1 and 2 were informed by the respondent Bank only on 30-8-2007. Therefore, as the sale date was 25-9-2007, it did not fulfil the mandatory requirement of 30 clear days' notice to the borrower as stipulated under Rule 8(6) of the 2002 Rules. In fact, on this score itself it can be held that if the sale had been effected on 25-9-2007, it would not have been in accordance with Section 13(8) of the SARFAESI Act, 2002, read along with Rules 8 and 9(1) of the 2002 Rules, and would have thus been invalid. But at the intervention of the High Court, the sale date fixed on 25-9-2007 was adjourned by six weeks. In any case, the sale was not effected even after the six weeks' period expired. Securitisation application filed by Respondents 1 and 2, came to be disposed of by the DRT only on 27-12-2007. Therefore, once the securitisation application was dismissed, even assuming that there was no impediment for the secured creditor, namely, the respondent Bank to resort to sale under the provisions of the SARFAESI Act, 2002, there should have been a fresh notice issued in accordance with Rules 8(6) and 9(1) of the 2002 Rules. Unfortunately, the respondent Bank effected the sale on 28-12-2007 by accepting the bid of the appellant. In fact, after the deposit of the 25% of the amount on 28-12-2007, the respondent Bank confirmed the sale in favour of the appellant on 31-12-2007. After the deposit of the balance amount on 11-1-2008 by communication dated 2-2-2008, the respondent Bank informed Respondents 1 and 2 about the confirmation of sale and thereby provided no scope for respondents to tender the dues of the secured creditor with all charges, expenses, etc., as has been provided under Section 13(8) of the SARFAESI Act, 2002. Therefore, the whole procedure followed by the respondent Bank in effecting the sale on 28-12-2007 and the ultimate confirmation of the sale on 11-1-2008, stood vitiated as the same was not in conformity with the provisions of the SARFAESI Act, 2002 and the 2002 Rules framed thereunder. Therefore, the judgment of Division Bench of High Court to the extent it set aside the sale effected in favour of the appellant was perfectly justified. (Paras 54 and 55). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

American Jurisprudence, 2d, Vol. 25, p. 652; Snell's Principles of Equity, 31st Edn., p. 119; Maxwell on the Interpretation of Statutes, 10th Edn., cited

Craies on Statute Law, 7th Edn., p. 207, referred to

M. Amritha Kumar v. Union of India, Writ Appeal No. 1555 of 2009, decided on 8-3-2010 (Ker), affirmed on this point

— S. 13(2) *See* S. 13(3-A)

— Ss. 13(2), 17 and 18 *See* 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19(25), 20, 21 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

[413] — Ss. 13(3-A), 13(2) and 17 — Bypassing of statutory mechanism — Interference by High Court in exercise of its writ jurisdiction — Permissibility — Where alternative remedy of making a representation is provided under statute, compliance with statutory remedy is mandatory in absence of cogent reasons — Non-interference by High Court, upheld — *In instant case, writ petition filed by appellant against notice under S. 13(2) issued by Bank demanding outstanding liabilities dismissed by Single Judge of High Court since statutory remedy of making representation against said notice is provided under S. 13(3-A) — Representation submitted by appellant in the meantime pending appeal before Division Bench of High Court, since considered by Bank and rejected, and Division Bench of High Court, dismissed appeal — Sustainability — Held, appellant (debtor) having availed statutory remedy of representation which was duly considered, nothing survived in said dispute — Further, consequent to said rejection, possession of secured assets of appellant had already been taken by Bank and possession notice published in newspapers — Hence, held, no interference is called for in order of High Court — Appellant is at liberty to take appropriate action to safeguard its interests — Constitution of India, Art. 226* (Paras 9 to 11). *Devi Ispat Ltd.* v. *SBI*, (2014) 5 SCC 762: (2014) 3 SCC (Civ) 336: (2014) 104 ALR 714: (2014) 138 AIC 182: (2014) 138 AIC 241.

Bench Strength 2. Coram: *Gyan Sudha Misra* and **Madan B. Lokur**, JJ. [Date of decision: 16-4-2014]

Devi Ispat Ltd. v. SBI, WP No. 274 of 2013, order dated 19-3-2013 (Cal); Devi Ispat Ltd. v. SBI, APOT No. 172 of 2013, order dated 26-4-2013 (Cal), affirmed

— Ss. 13(4) and 14 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 105, 108(c), 109 & 111 and Ss. 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

[414] — Ss. 13(4), 17 and 34 — Expression "any person" used in S. 17 — Import of — Held, is of wide import and takes within its fold not only borrower but also guarantor or any other person who may be affected by measures taken under S. 13(4) — *On facts held, expression "any person" includes plaintiff-Respondents 1 to 5 as well, who had filed a civil suit challenging sale of the secured property on grounds that same was HUF property — Thus, irrespective of issue of maintainability of civil suit, remedy lay under S. 17 where Bank (secured creditor) adopts any measure as contemplated under S. 13(4) for enforcement of its security interest, including sale of secured assets, in respect of which Respondents 1 to 5 were claiming an interest — High Court erred in holding that civil court had such jurisdiction. Jagdish Singh* v. *Heeralal*, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444: AIR 2014 SC 371: (2014) 1 CTC 652: (2014) 1 LW 108: (2014) 3 Mah LJ 588: (2014) 2 MPLJ 560: (2014) 102 ALR 253: (2013) 132 AIC 38.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 30-10-2013]

Heeralal Kulmi v. Govind Kulmi, First Appeal No. 130 of 2008, order dated 5-8-2010 (MP), reversed

[415] — Ss. 13(4), 17, 34 and 35 — Ouster of jurisdiction of civil court — Extent of — Held, S. 34 ousts jurisdiction of civil courts "in respect of any matter" which DRT or Appellate Tribunal is entitled to determine, while S. 13(4) deals with measures for enforcement of security interest — Expression "in respect of any matter" in S. 34 also take in measures provided under S. 13(4) — Consequently, "any person" aggrieved against any "measures" can approach DRT or Appellate Tribunal and not civil court — *Civil court has no jurisdiction in such matters — Besides, SARFAESI Act overrides other laws in terms of S. 35, if they are inconsistent with provisions of the Act, which takes in S. 9 CPC as well — Bank in instant case had proceeded only against secured assets of borrowers i.e. Respondents 6 to 10 on which no rights of Respondents 1 to 5 had been crystallised — High Court erred in holding that civil court had jurisdiction to examine as to whether "measures" taken by secured creditor under S. 13(4) were legal or not — CPC, 1908, S. 9*

The Bank had advanced a loan of Rs 25 lakhs to M/s *G*, Respondent 10 herein, through its proprietor, Respondent 6 on 17-2-2000. The loan was secured by a mortgage by deposit of title deeds (MDTD) executed by Respondents 7 to 9 in respect of the suit land. Respondents 6 to 8 had also created MDTDs on three houses, which were in their respective names. Original title deeds of all the abovementioned properties were duly deposited with the Bank at the time of availing of the loan.

Since they committed default in re-paying the loan, the Bank issued notice under Section 13(2) of the SARFAESI Act and took steps under Section 13(4) of the SARFAESI Act in respect of the suit land on 1-3-2004. Auction notice was duly published in the newspapers on 30-9-2005. No objection was raised thereagainst by Respondents 1 to 5 herein, and the suit land was auctioned on 8-11-2005, which was settled in favour of the highest bidder, the appellant herein. The entire auction price was paid by the appellant auction-purchaser and the sale in his favour was duly confirmed. Respondents 7 to 9 challenged the sale notice before the DRT, which was dismissed on

21-7-2006. No appeal was preferred against that order and that order has attained finality.

At this juncture, Respondents 1 to 5 filed a civil suit before the District Judge against the appellant, as well as the Bank and Respondents 6 to 9, alleging that the family members Respondents 1 to 9 herein being sons/grandsons of deceased *P*, constituted a HUF engaged in agriculture. It was stated that the suit land was purchased in the names of Respondents 7 to 9 out of the funds of HUF and, therefore, was HUF property.

In the abovesaid civil suit, Respondents 1 to 5 prayed for a declaration of title, partition and permanent injunction against Respondents 7 to 9 and others in which the appellant and the Bank were also made parties. The Bank and the appellant filed a preliminary objection in the suit stating that in view of Section 13 read with Section 34 of the SARFAESI Act, the civil court had no jurisdiction to entertain the abovesaid civil suit. The civil court upheld the preliminary objection. Aggrieved thereby, Respondents 1 to 5 filed an appeal before the High Court which was allowed by the impugned judgment holding that the civil court was the appropriate forum to decide as to whether the secured assets were ancestral properties of an HUF and were acquired through earnings out of joint family properties. Hence, the instant appeal.

Allowing the appeal,

Held :

The evidence clearly indicates that the properties in question were purchased by Respondents 6 to 9 in their individual names, long after the death of the karta of the HUF and that too by registered sale deeds, and no claim was ever made at any stage by any member of the HUF that those properties and buildings were HUF properties and not the individual properties of Respondents 6 to 9 herein. Thus, the Bank had advanced loans on the strength of these documents which stood in the names of Respondents 6 to 9. Due to non-repayment of the loan amount, the Bank can always proceed against the secured assets. (Paras 12 and 13)

Section 17 of the SARFAESI Act confers a right of appeal to "any person", including the borrower, if that person is aggrieved by any of the "measures" taken by the secured creditor under Section 13(4). A further appeal can be preferred to the Appellate Tribunal under Section 18 of the SARFAESI Act. (Paras 14 to 17)

The expression "any person" used in Section 17 of the SARFAESI Act is of wide import and takes within its fold not only the borrower but also the guarantor or any other person who may be affected by the action taken under Section 13(4) of the SARFAESI Act. Therefore, the expression "any person" referred to in Section 17 would take in the plaintiffs in the suit i.e. Respondents 1 to 5 herein, as well. Thus, irrespective of the question whether the civil suit is maintainable or not, under the SARFAESI Act itself, a remedy is provided to such persons so that they can invoke the provisions of Section 17 of the SARFAESI Act, in case the Bank (secured creditor) had adopted any measure including the sale of the secured assets in respect of which the plaintiffs (Respondents 1 to 5 herein) claim an interest. (Paras 19 and 20)

Section 34 of the SARFAESI Act ousts the civil court jurisdiction. Section 13 deals with the enforcement of the security interest without the intervention of the court or tribunal but in accordance with the provisions of the SARFAESI Act. When the secured creditor proposes to proceed against the secured assets, Section 13(4) envisages various measures to secure the borrower's debt. One of the measures provided by the SARFAESI Act is to take possession of secured assets of the borrowers, including the right to transfer by way of lease, assignment or realising the secured assets. Any person aggrieved by any of the "*measures*" referred to in Section 13(4) has got a statutory right of appeal to the DRT under Section 17. The opening portion of Section 34 clearly states that no civil court shall have the jurisdiction to entertain any suit or proceeding "*in respect of any matter*" which a DRT or an Appellate Tribunal is empowered by or under the SARFAESI Act to determine. The expression "in respect of any matter" referred to in Section 34 would take in the "measures" provided under Section 13(4) of the SARFAESI Act. Consequently if any aggrieved person has got any grievance against any "measures" taken by the borrower under Section 13(4), the remedy open to him is to approach the DRT or the Appellate Tribunal and not the civil court. The civil court in such circumstances has no jurisdiction to entertain any suit or proceedings in respect of those matters which fall under Section 13(4) of the SARFAESI Act because those matters fell within the jurisdiction of the DRT and the Appellate Tribunal. Further, Section 35 says, the SARFAESI Act overrides other laws, if they are inconsistent with the provisions of that Act, which takes in Section 9 CPC as well. (Paras 21, 23 and 24)

The Bank, in the instant case, had proceeded only against secured assets of the borrowers i.e. Respondents 6 to 10 on which no rights of

Respondents 1 to 5 had been crystallised, before creating security interest in respect of the secured assets. The High Court was in error in holding that only civil court had the jurisdiction to examine as to whether the "measures" taken by the secured creditor under Section 13(4) of the SARFAESI Act were legal or not. (Paras 25 and 26). *Jagdish Singh* v. *Heeralal*, (2014) 1 SCC 479: (2014) 1 SCC (Civ) 444: AIR 2014 SC 371: (2014) 1 CTC 652: (2014) 1 LW 108: (2014) 3 Mah LJ 588: (2014) 2 MPLJ 560: (2014) 102 ALR 253: (2013) 132 AIC 38.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 30-10-2013]

Heeralal Kulmi v. Govind Kulmi, First Appeal No. 130 of 2008, order dated 5-8-2010 (MP), reversed

— S. 13(8) *See* S. 37

See also 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[416] — S. 13(8) — Scope and object — Right of redemption of mortgagor — Nature of — Property right enjoying protection of Art. 300-A of Constitution — *Held, S. 13(8) protects the ownership right of a borrower/debtor (i.e. the right of redemption), which is a constitutional right under Art. 300-A of Constitution — S. 13(8) gives opportunity to borrower, the owner of secured asset to take all efforts to stop sale or transfer of secured asset till last minute by tender of dues inclusive of costs, charges, etc., to secured creditor before date fixed for sale or transfer of secured asset — Once such tender as stipulated in S. 13(8) is made by borrower, it is mandatory for secured creditor not to effect sale or transfer of secured asset and also not to take any further steps for same — Constitution of India, Art. 300-A — Transfer of Property Act, 1882, Ss. 60 and 83. Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

[417] — S. 13(8) — Exercise of right of redemption by borrower/mortgagor — Role of secured creditor — *Held, creditor should show some leniency to borrower, if not more, to enable borrower to tender amounts due — Hence, if there is some difference in amount tendered by borrower while exercising his right of redemption under S. 13(8), question of difference in amount should be kept open and can be decided subsequently — However, on this count, borrower's right of redemption cannot be frustrated — Transfer of Property Act, 1882, S. 60 — Constitution of India, Art. 300-A — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9* (Para 41). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

Mardia Chemicals Ltd. v. Union of India, (2004) 4 SCC 311, followed

— Ss. 13(13), (2) and 35 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 65-A, 105, 109 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— S. 14 *See also* S. 13; S. 17(1)

[418] — S. 14 — Exercise of power by CMM or DM, under — Remedy against, held, lies under Arts. 226 and 227 of Constitution. *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— S. 17 *See also* S. 13(3-A); S. 13(4)

[419] — Ss. 17(1), 13 and 14 — Persons who may invoke jurisdiction of DRT under S. 17(1) — Relief that may be granted by DRT — Restoration of possession of secured asset — Persons to whom possession may be restored by DRT — *Lessee of borrower in possession of secured asset where (i) lease is created prior to mortgage which created the secured asset, or (ii) lease is created after the mortgage vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower, held, falls within words "any person" so as to invoke jurisdiction of DRT under S. 17(1) — However, since DRT has power to restore possession of secured asset only to the borrower vide S. 17(3), any such lessee of borrower has no remedy under S. 17 to protect his possession under a valid and subsisting lease that falls in the leases of type (i) or (ii), above — Remedy of such lessee would only be under Arts. 226 and 227 of Constitution — Constitution of India, Art. 226 — Words and Phrases — "Any person"*

The words "any person" in Section 17(1) of the SARFAESI Act are wide enough to include a lessee of the mortgagor/borrower also. It is also possible to take a view that within 45 days from the date on which a possession notice is delivered or affixed or published under sub-rules (1) and (2) of Rule 8 of the 2002 Rules, such a lessee may file an application before DRT having jurisdiction in the matter

for restoration of possession in case he is dispossessed of the secured asset. But Section 17(3) of the SARFAESI Act provides that DRT has powers to restore possession of the secured asset to the borrower only and not to any person such as a lessee of the borrower. Hence, even if DRT comes to the conclusion that any of the measures referred to in Section 13(4) of the SARFAESI Act taken by the secured creditor are not in accordance with the provisions of the SARFAESI Act, it cannot restore possession of the secured asset to the lessee of the borrower. Where, therefore, DRT considers the application of the lessee and comes to the conclusion that the lease in favour of the lessee was made prior to the creation of mortgage or the lease though made after the creation of mortgage is in accordance with the requirements of Section 65-A TPA and the lease was valid and binding on the mortgagee and the lease is yet to be determined, DRT will not have the power to restore possession of the secured asset to the lessee. Hence, there is no remedy available under Section 17 of the SARFAESI Act to the lessee of the borrower to protect his lawful possession under a valid lease. (Para 32)

Section 14(3) of the SARFAESI Act provides that no act of the CMM or the DM or any officer authorised by the CMM or DM done in pursuance of Section 14 shall be called in question in any court or before any authority. The SARFAESI Act, therefore, attaches finality to the decision of the CMM or the DM and this decision cannot be challenged before any court or any authority. But the Supreme Court has repeatedly held that statutory provisions attaching finality to the decision of an authority excluding the power of any other authority or court to examine such a decision, will not be a bar for the High Court or the Supreme Court to exercise jurisdiction vested by the Constitution because a statutory provision cannot take away a power vested by the Constitution. Therefore, the decision of the CMM or the DM can be challenged before the High Court under Articles 226 and 227 of the Constitution by any aggrieved party and if such a challenge is made, the High Court can examine the decision of the CMM or the DM, as the case may be, in accordance with settled principles of law. (Para 29). *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— **S. 34** *See* S. 13; S. 13(4)

— **Ss. 34, 35, 13 and 14** *See* RENT CONTROL AND EVICTION — 'Maharashtra Rent Control Act, 1999 (18 of 2000)', S. 33, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **S. 35** *See also* S. 13; S. 13(4); S. 37

[420] — Ss. 35 and 37 — Overriding effect of SARFAESI Act, 2002 over any other law — Extent of — Held, is only to the extent that any provision of the other law is inconsistent with provisions of SARFAESI Act, 2002, and only to that extent. *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— **S. 37** *See* S. 13; S. 35

[421] — S. 37 r/w S. 35 — Application of other laws, when provisions contained therein are not inconsistent with SARFAESI Act, 2002 — Applicability of RDDB Act, 1993 — Effect of S. 37 of SARFAESI Act, 2002 — *Held, in addition to provisions contained under SARFAESI Act, 2002, in respect of proceedings initiated under SARFAESI Act, it will be proper for a party to fall back upon provisions of other Acts mentioned in S. 37 including RDDB Act, 1993 — However, provisions of such other Acts should not be inconsistent with provisions of SARFAESI Act, 2002 — Thus, held, application of SARFAESI Act, 2002 will be in addition to S. 29 of RDDB Act, 1993 — Submission that provisions of CPC, particularly, Or. 21 Rr. 64 to 69, can also be applied in present case by virtue of S. 37, SARFAESI Act, 2002, not considered by Supreme Court — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29 — CPC, 1908, Or. 21 Rr. 64 to 69 — Transfer of Property Act, 1882, Ss. 69 and 69-A. Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

American Jurisprudence, 2d, Vol. 25, p. 652; Snell's Principles of Equity, 31st Edn., p. 119; Maxwell on the Interpretation of Statutes, 10th Edn., cited

Craies on Statute Law, 7th Edn., p. 207, referred to

[422] — Ss. 37, 35 and 13(8) — Sale of secured asset — Adjournment of sale or issuance of fresh proclamation of sale — Absence of provisions regarding, under SARFAESI Act, 2002 — Procedure to be followed — *Held, by virtue of S. 37, SARFAESI Act, 2002, provisions of S. 29, RDDB*

Act, 1993 will be applicable — And, by virtue of stipulation contained in S. 29, RDDB Act, 1993, provisions of R. 15(2), Sch. II Pt. I of Income Tax Act, 1961 have to be followed when notice of sale notified as per Rr. 8 and 9(1) of 2002 Rules r/w S. 13(8), SARFAESI Act, 2002, gets postponed — Submission that provisions of CPC, particularly, Or. 21 Rr. 64 to 69, can also be applied in present case by virtue of S. 37 SARFAESI Act, 2002, not considered by Supreme Court — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29 — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Income Tax Act, 1961, Sch. II Pt. I R. 15 — CPC, 1908, Or. 21 Rr. 64 to 69 — Transfer of Property Act, 1882, Ss. 69 and 69-A. Mathew Varghese v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

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Craies on Statute Law, 7th Edn., p. 207, referred to

M. Amritha Kumar v. Union of India, Writ Appeal No. 1555 of 2009, decided on 8-3-2010 (Ker), affirmed on this point

(n) Security Interest (Enforcement) Rules, 2002

— **Rr. 8 and 9** *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 13 and 37, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 37, 35 and 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also PROPERTY LAW — 'Transfer of Property Act, 1882', S. 60, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[423] — Rr. 8 and 9 — Mandatory provisions of Rr. 8 and 9 — Waiver of, by borrower — Reiterated, is possible — Waiver of the mandatory provisions — What amounts to — *As the provisions of Rr. 8 and 9 are for benefit of borrower, borrower can always waive these procedural requirements — However, question whether there is a waiver or not depends on facts of each case and no hard-and-fast rule can be laid down in this regard — Borrower's efforts to thwart the sale of the secured property (which prevented auction-sale of the secured property by secured creditor on two occasions), held, cannot be taken as waiver of mandatory requirements under Rr. 8 and 9 of 2002 Rules — Hence, this did not relieve secured creditor from its obligation to follow mandatory requirements of 2002 Rules at time of third auction, by serving proper 30 days' notice for auction on borrower and complying with other requirements — On facts, held, there was no waiver of mandatory requirements of Rr. 8 and 9 of 2002 Rules, either express or implied on part of borrower — In fact, when third auction-notice dt. 27-4-2006 was published for sale to be held on 8-5-2006 (violating condition of 30 days' clear notice), borrower immediately challenged such notice by filing writ petition before High Court — Hence, sale conducted in favour of appellant auction-purchaser in the third auction in breach of mandatory conditions is null and void — Order of High Court setting aside such sale, upheld — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13 — Constitution of India, Art. 300-A — Transfer of Property Act, 1882, Ss. 60, 69 and 69-A*

Respondent 1 (borrower) defaulted in repayment of loan to the tune of Rs 1.84 crores taken from Syndicate Bank. The Bank proceeded to sell the mortgaged property by publishing the notice for auction on 11-9-2004 fixing the date of auction as 15-10-2004. The reserve price of property was fixed at Rs 3.50 crores. At this stage, the borrower filed a writ petition in the High Court challenging the auction-notice just 3 days before the proposed sale i.e. on 12-10-2004. The High Court did not grant stay against the scheduled auction, but it granted stay against the confirmation of sale. It was stated that in view of this partial stay order by the High Court, nobody came forward to participate in the auction and the exercise went into futility. This writ petition was ultimately dismissed by the High Court.

Thereafter, the Bank made a second attempt for sale of the mortgaged property and issued a fresh notice of auction on 9-3-2005, fixing the date of auction as 21-3-2005. In this auction, mortgaged property could fetch the highest offer in the sum of Rs 2.25 crores only and the Bank asked the borrower to convey its consent for the sale at Rs 2.25 crores. At this, the borrower expressed its intention for one-time settlement (OTS) with the Bank at Rs 2.13 crores. The Bank sanctioned the borrower's proposal with a stipulation that it would make the payment within the stipulated time. However, instead of making the payment, extensions were

sought by the borrower and ultimately, the OTS did not fructify.

Now the Bank took steps for auction for the third time and auction-notice dated 27-4-2006 was published, for the auction of property on 8-5-2006. Challenging this auction-notice, the borrower filed a writ petition but withdrew the same with the liberty to avail the alternate remedy under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act). In the auction held on 8-5-2006, the bid of the appellant at Rs 2.16 crores being the highest was accepted and on receiving the entire consideration, a sale deed was executed in favour of the appellant.

The borrower challenged the said sale by filing an application before the Debts Recovery Tribunal (DRT). This application was dismissed. The borrower then filed a writ petition before the High Court and same was also dismissed by the Single Judge of the High Court. The borrower appealed against this order before the Division Bench of the High Court. The Division Bench found several infirmities in the conduct of the impugned auction-sale especially the infraction of the mandatory requirements under Rules 8(5) and 8(6) of the Security Interest (Enforcement) Rules, 2002 (the 2002 Rules) and set aside the sale of the property in favour of the appellant. Aggrieved, the appellant/auction-purchaser and the Bank had filed the present appeals.

The infringement of mandatory provisions of Rules 8 and 9 of the 2002 Rules was not disputed by the parties but still it was contended by the appellants that the sale was valid because of the reason that the delay was entirely attributable to the borrower who by its conduct had waived the said mandatory requirements of the 2002 Rules.

In this backdrop, the question that arose before the Supreme Court was: whether the borrower by its conduct (dilatory tactics) in the present case had waived the mandatory provisions of Rules 8 and 9 of the 2002 Rules.

Answering in negative and dismissing the appeals,

Held :

Rule 9 of the 2002 Rules is mandatory in nature. As laid down in *Ikbal*, (2013) 10 SCC 83, though Rule 9 is mandatory, that provision is for the benefit of the borrower. It is a settled position in law that even if a provision is mandatory, it can always be waived by a party (or parties) for whose benefit such provision has been made. The provision in Rule 9(1) being for the benefit of the borrower and the provisions contained in Rule 9(3) and Rule 9(4) being for the benefit of the secured creditor (or for the benefit of the borrower), the secured creditor and the borrower can lawfully waive their rights. These provisions neither expressly nor contextually indicate otherwise. Obviously, the question whether there is waiver or not depends on the facts of each case and no hard-and-fast rule can be laid down in this regard. (Para 16)

There is no conflict between the two sets of judgments, namely, *Mathew Varghese*, (2014) 5 SCC 610 followed in *J. Rajiv Subramaniyan*, (2014) 5 SCC 651 on the one hand and *Ikbal*, (2013) 10 SCC 83 on the other hand. All three cases hold that Rules 8 and 9 of the 2002 Rules are mandatory. However, *Ikbal case* proceeds further to lay down the principle that since these provisions are for the benefit of the borrower, the borrower can always waive those procedural requirements. This latter aspect never fell for consideration in the earlier two judgments. Further, it is expressly clarified in *Ikbal case* itself that the question whether there is a waiver or not depends on the facts of each case and no hard-and-fast rule can be laid down in this regard. (Paras 18 and 19)

In the present facts, no case of waiver is made out. From what is argued by the appellants (auction-purchaser and the Bank), at best it can be inferred that the borrower tried to thwart the earlier attempts of the Bank in selling the property. When the first auction-notice was issued, the borrower filed the writ petition. However, it is to be borne in mind that in the said writ petition no interim order was passed staking the auction on the stipulated date. The only stay granted was against confirmation of sale. That did not preclude anybody from participating in the auction. The Supreme Court is mindful of the ground realities that many times pendency of such a writ petition challenging the auction-notice and the kind of stay granted, even partial in nature, deter the intending buyers to come forward and participate in the auction. Be that as it may, when the Bank requested the borrower to accept the bid of Rs 2.25 crores offered in the second auction, the borrower instead of doing so took initiative resulting in one-time settlement (OTS) but defaulted therein. This would merely indicate that the borrower was at fault in not adhering to OTS. By no logic can it be deduced therefrom that the Bank was relieved from its obligation not to follow the mandatory procedure contained in the 2002 Rules, while taking fresh steps for the disposal of the property. (Paras 20, 21 and 23)

Even if there were delaying tactics adopted by the borrower in respect of the first two auctions, that conduct of the borrower would not amount to waiving the mandatory requirement of publishing subsequent notice dated 27-4-2006 fixing the date of auction as 8-5-2006. The aforesaid conduct cannot be taken as waiver of the mandatory condition of 30 days' notice for auction as well as other requirements. For examining the plea of waiver, it is to be seen as to whether by implied or express actions, the borrower has waived the aforesaid mandatory requirement when the property was put to sale. It is not found, nor is it suggested, that there was even the slightest move on the part of the borrower in this regard which may amount to waiver either express or implied. On the contrary, when notice dated 27-4-2006 was published, the borrower immediately filed Writ Petition No. 6471 of 2006 challenging the auction-notice. Thus, the borrower's conduct, far from waiving the aforesaid requirement, was to confront the Bank by questioning its validity. There is, thus, not even an iota of material suggesting any waiver on the part of the borrower. (Para 24)

As it is found that the mandatory requirements of the 2002 Rules have not been waived by the borrower, the consequences in law have to follow. When there is a breach of the said mandatory requirement the sale is to be treated as null and void. Moreover, the appellant has no answer to many other infirmities pointed out by the High Court. As the order of the High Court setting aside the sale is affirmed, two months' time is granted to the borrower to discharge the entire liability of the Bank. The borrower shall also reimburse the amount of registration fee and stamp duty to the appellant/auction-purchaser. If the borrower pays these amounts, the property shall revert back to the borrower. If the aforesaid amounts are not paid within the stipulated two months, the Bank shall be at liberty to proceed with the sale of the property following due procedure under the law. Insofar as the appellant/auction-purchaser is concerned, he shall be refunded the entire amount spent by him. The interest is consciously not granted to the appellant/auction-purchaser on the aforesaid amount, as the purchaser has, in the meantime, utilised the property in question. (Paras 25 to 27, 12 and 13). *Vasu P. Shetty* v. *Hotel Vandana Palace*, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304: AIR 2014 SC 1947: (2014) 144 AIC187: (2014) 186 Comp Cas 82: (2014) 3 CTC 193: (2014) 107 ALR 714: (2014) 4 LW 770.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 22-4-2014]

Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610; J. Rajiv Subramaniyan v. Pandiyas, (2014) 5 SCC 651; Sri Siddeshwara Coop. Bank Ltd. v. Ikbal, (2013) 10 SCC 83: (2013) 4 SCC (Civ) 638, clarified, harmonised and applied

Hotel Vandana Palace v. Syndicate Bank, Writ Appeal No. 6368 of 2011, decided on 21-11-2011 (KAR), affirmed

[424] — Rr. 8 and 9 — Sale of secured asset by public auction — Sale not in conformity with SARFAESI Act, 2002 and 2002 Rules — Conditional setting aside of sale — Non-fulfilment of condition — Sale would revive — *Division Bench of High Court in writ appeal set aside sale in favour of auction-purchaser of secured asset (appellant) on condition that respondent guarantors would make payment to auction-purchaser within stipulated time (2 months in present case) — In event of failure of respondent guarantors to make such payment, sale was directed to be confirmed in favour of auction-purchaser — Respondent guarantors failed to make such payment within stipulated time and instead sought extension of time for payment — Held, sale in such situation by virtue of clear directions of Division Bench of High Court was automatically confirmed in favour of auction-purchaser — Division Bench found not justified in giving respondent guarantors extension of time for payment — Respondent guarantors had no right to claim any relief especially when application for extension of time was made much after expiry of original period — Also, reason given by respondent guarantors and accepted by Division Bench of High Court for extension of time, that as they had to arrange funds by sale of secured asset only, sale took time being a property in litigation, is a standard reason which any party pleads while seeking for extension of time, which is unacceptable — Still further, ownership rights which had crystallised in favour of auction-purchaser on non-fulfilment of condition by respondent guarantors, could not easily be taken away — On facts, holding that price fetched through auction-sale (Rs 1.27 crores) was not the correct price of secured asset, auction-purchaser directed to deposit further price of Rs 76 lakhs, failing which sale would be cancelled and creditor Bank would conduct auction of property afresh — Constitution of India, Art. 300-A — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13 — Transfer of Property Act, 1882, Ss. 54, 69 and 69-A*

The Division Bench of the High Court while setting aside the sale in favour of the appellant had given a direction that the sale would stand set aside

and invalidated on a condition that Respondents 1 and 2 would forward a demand draft of Rs 2 crores from a local branch of a nationalised bank in favour of the appellant by handing it over to him within 2 months from the date of the order, namely, 8-3-2010. It was also made tacitly clear that if the payment was not made as directed, the sale in favour of the appellant would stand confirmed and the writ appeal would stand dismissed. Therefore, subject to the compliance with the directions, the cancellation of the sale in favour of the appellant was ordered. Having regard to such specific direction of the Division Bench, wnen by 8-5-2010, Respondents 1 and 2 failed to make the required payment to the appellant, the writ appeal stood dismissed without any further reference to anyone, even to the Court and the sale effected in favour of the appellant stood confirmed. In fact, since the application for extension, namely, IA No. 437 of 2010 came to be filed only on 10-6-2010, it should be held that there was no right in Respondents 1 and 2 or for Respondent 8 herein to seek for any further indulgence before the Division Bench for further extension of time. (Paras 57, 58 and 62)

There were absolutely no justifiable grounds for the Division Bench of the High Court to grant further time in its order dated 18-6-2010, by accepting the flimsy grounds raised by Respondents 1 and 2 that they could not raise funds in spite of two months' time granted to them. It is also found that while the time granted by the Division Bench expired by 8-5-2010, the application for extension was filed much later i.e. on 10-6-2010. Therefore, for such a recalcitrant attitude displayed by Respondents 1 and 2 in respect of a litigation which involved very high stakes, the Division Bench of the High Court should not have come for their rescue in the absence of any weighty reasons. The reason adduced on behalf of Respondents 1 and 2 is the standard reason which any party pleads while seeking extension of time. (Paras 65 and 66)

Further, it will have to be stated that the ownership right which got crystallised in favour of the appellant as on 9-5-2010, could not have been snatched away by the Division Bench by passing the impugned orders dated 18-6-2010 and 8-7-2010. Therefore, while upholding the judgment of the Division Bench dated 8-3-2010, the orders dated 18-6-2010 and 8-7-2010 passed in IAs Nos. 437 and 507 of 2010 are set aside. (Paras 67, 68, 56 and 71)

As has been held above, since the proper procedure for effecting the sale to the appellant was not followed, it will have to be held that the price fetched through the appellant cannot be held to be the correct price for the mortgaged property involved in these proceedings. Further, the very fact that in the year 2010 the property could fetch Rs 2.03 crores, in all fairness even while confirming the order of the Division Bench, by which the sale in favour of the appellant came to be confirmed, the difference in the sale price i.e. Rs 76 lakhs is directed to be paid by the appellant. If the appellant fails to deposit this amount within the stipulated time-limit, the sale already effected by the respondent Bank shall stand cancelled automatically without any further reference to the Supreme Court. Thereafter, the respondent Bank shall bring the property for auction afresh, following the provisions of the SARFAESI Act, 2002. (Paras 69, 70.4 and 70.5). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

Order dated 18-6-2010 in IA No. 437 of 2010 and order dated 8-7-2010 IA No. 507 of 2010 in Writ Appeal No. 1555 of 2009, reversed

— Rr. 8(1) and (2) *See* 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

[425] — R. 8(3) — Care of secured asset once taken possession of by secured creditor — Onerous responsibility on secured creditor under R. 8(3) — As much care of property is required as owner of ordinary prudence would under similar circumstances take care of such property — Underlying purport of such requirement under R. 8(3), explained — *Contract Act, 1872, Ss. 151 and 172 — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13 — Trusts Act, 1882, Ss. 90 and 88 — Transfer of Property Act, 1882, Ss. 69, 76 and 67. Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

[426] — R. 8(4) — Preservation and protection of secured assets under — Types of assets covered — Held, R. 8(4) governs both movable and immovable secured assets — *Securitisation and Reconstruction of Financial Assets and*

Enforcement of Security Interest Act, 2002, S. 13 — Contract Act, 1872, S. 172. Mathew Varghese v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

[427] — Rr. 8(6) and 9(1) — Expression "or" used in R. 9(1) — Held, should be read as "and" — Hence, prior to sale of immovable secured asset, 30 days' clear notice to public as well as 30 days' individual notice to borrower has to be ensured — *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8) — Words and Phrases — "Or". Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

[428] — Rr. 8(6) and 9(1) — Sale or transfer of secured asset — Individual notice of such sale or transfer to borrower — Held, mandatory — Object of giving such individual notice to borrower also explained — *Sale or transfer of secured asset cannot take place without duly informing the borrower of date and time of such sale or transfer — Under Rr. 8(6) and 9(1), borrower has to be served with clear 30 days' individual notice for sale or transfer of secured asset — Such individual notice is required to enable borrower to take all efforts to retain his or her ownership by tendering dues to secured creditor before the date of sale — Any sale or transfer effected without complying with this statutory requirement would be a constitutional violation and would nullify the ultimate sale — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8) — Constitution of India, Art. 300-A — Transfer of Property Act, 1882, Ss. 60, 69, 69-A and 83*

Reading Rule 8(6) and Rule 9(1) of the 2002 Rules together, the service of individual notice to the borrower, specifying clear 30 days' time-gap for effecting any sale of immovable secured asset is a statutory mandate. It is also stipulated that no sale should be affected before the expiry of 30 days from the date on which the public notice of sale is published in the newspapers. Therefore, the requirement under Rule 8(6) and Rule 9(1) of 2002 Rules contemplates a clear 30 days' individual notice to the borrower and also a public notice by way of publication in the newspapers. In other words, not only should the publication in newspaper provide for 30 days' clear notice, but since Rule 9(1) also states that such notice of sale is to be in accordance with the proviso to Rule 8(6), 30 days' clear notice to the borrower should also be ensured as stipulated under Rule 8(6) as well. Therefore, the use of the expression "or" in Rule 9(1) should be read as "and" as that alone would be in consonance with Section 13(8) of the SARFAESI Act, 2002. (Para 31)

Such a detailed procedure while resorting to a sale of an immovable secured asset is prescribed under Rules 8 and 9(1) of the 2002 Rules which has got a twin objective to be achieved. In the first place, by virtue of the stipulation contained in Section 13(8) of the SARFAESI Act, 2002 read along with Rules 8(6) and 9(1) of 2002 Rules, the owner/borrower should have clear notice of 30 days before the date and time when the sale or transfer of the secured asset would be made, as that alone would enable the owner/borrower to take all efforts to retain his or her ownership by tendering the dues of the secured creditor before that date and time. Secondly, when such a secured asset is brought for sale, the intending purchasers should know the nature of the property, the extent of liability pertaining to the said property, any other encumbrances pertaining to the said property, the minimum price below which one cannot make a bid and the total liability of the borrower to the secured creditor. Since the proviso to Rule 8(6) of 2002 Rules also mentions that any other material aspect should also be made known when effecting the publication, it would only mean that the intending purchaser should have entire details about the property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about the factors connected with the asset in question. (Paras 33 to 33.2)

The paramount objective is to provide sufficient time and opportunity to the borrower to take all efforts to safeguard his right of ownership either by tendering the dues to the creditor before the date and time of the sale or transfer, or ensure that the secured asset derives the maximum price and no one is allowed to exploit the vulnerable situation in which the borrower is placed. Therefore, the secured creditor should ensure that the borrower was clearly put on notice of the date and time by which either the sale or transfer will be effected. (Paras 33.3 and 29.4). *Mathew Varghese* v. *M.*

Amritha Kumar, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

***Applied in** J. Rajiv Subramaniyan v. Pandiyas, (2014) 5 SCC 651*

***Clarified, harmonised and applied in** Vasu P. Shetty v. Hotel Vandana Palace, (2014) 5 SCC 660 at pp. 669-674*

[429] — Rr. 8(6) proviso and 9(1) — Public notice of sale of immovable secured asset — Details to be set out in notice — Purpose of giving such details, explained — *Held, intending purchaser should have entire details about property brought for sale in order to rule out any possibility of the bidders later on to express ignorance about factors connected with asset in question — Transfer of Property Act, 1882, Ss. 55(1)(a) & (g), 69 and 69-A. Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

[430] — R. 8(8) — "Parties" referred to, in R. 8(8) — Held, can only relate to secured creditor and borrower, which includes guarantors [as defined in S. 2(f) of SARFAESI Act, 2002] — *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 2(f) and 13 — Words and Phrases — "Borrower" — Contract Act, 1872, S. 128* (Para 53). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

(o) State Financial Corporations Act, 1951

— S. 29 — Auction of secured asset — Clause providing that all statutory liabilities arising out of land and properties shall be borne by auction-purchaser — Effect of *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 54 and 55(1)(g) & (2) and Ss. 65(c), 76(c) & 108(g), (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

[431] — S. 29 — Debt of secured creditors vis-à-vis Central Excise — Held, State Financial Corporation (SFC) would have priority over mortgaged property/secured asset being secured creditor and Central Excise Department has no charge over said property — *Transfer of Property Act, 1882, S. 100 — Central Excise Rules, 1944, R. 230*

In answering the question whether UPFC would have priority being a secured creditor by virtue of deed of mortgage or the Central excise in respect of its dues having regard to Rule 230(2) of the Central Excise Rules, the Supreme Court in *Shreyas Papers (P) Ltd.*, (2006) 1 SCC 615 held that the provisions of Rule 230 of the Excise Rules do not in any way create a charge over any of the goods enumerated therein. After explaining the term "charge" as defined in Section 100 of the Transfer of Property Act, it was held that a charge is different from the word "detained". As Rule 230 only empowers detention and there is no other provision under the Central Excise Act or the Rules which envisages to create any charge over the assets of a unit to enable the realisation of the Central excise duty on top priority. Thus, UPFC has a priority being a secured creditor on the one hand and the Central Excise Department having no "charge" over the property. (Para 16)

Insofar as dues of the Government in the form of tax or excise, etc. are concerned, as per the common law principle of Crown debt they prevail over the rights of only unsecured creditors. The principle of Crown debt pertains to the common law principle. When Parliament or the State Legislature makes an enactment, the same would prevail over the common law and thus the common law principles which existed on the date of coming into force of the Constitution of India, must yield to a statutory provision. A debt, which is secured or which by reason of the provisions of a statute becomes the first charge over the property must be held to prevail over the Crown debt which is an unsecured one. On this reasoning, the debt payable to the secured creditor like the Financial Corporation was prioritised vis-à-vis the Central Excise dues. (Para 18)

As far as the liability of the successor-in-interest is concerned, the liability to pay Government dues even without a binding statutory charge can be fastened on that person who had purchased the entire unit as an ongoing concern and not a person who had purchased land and building or the machinery of the erstwhile concern. (Para 20)

Thus, it is only in those cases where the buyer had purchased the entire unit i.e. the entire business itself, that he would be responsible to discharge the liability of Central Excise as well. Otherwise, the subsequent purchaser cannot be fastened with the liability relating to the dues of the Government

unless there is a specific provision in the statute imposing a first charge in respect of Government dues on subsequent transferees/purchasers. As far as the Central Excise Act is concerned, there is no such specific provision. The proviso to Section 11 of the Central Excise Act, 1944 has now been added by way of amendment in the Act only w.e.f. 10-9-2004. Accordingly, UPFC being a secured creditor had priority over the excise dues. Since the appellant had not purchased the entire unit as a business, as per the statutory framework he is not liable for discharging the dues of the Excise Department. (Para 21). *Rana Girders Ltd.* v. *Union of India*, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130: AIR 2013 SC 3422: (2013) 295 ELT 12.

Bench Strength **2**. Coram: *Anil R. Dave* and **A.K. Sikri**, JJ. [Date of decision: 16-8-2013]

State of Karnataka v. Shreyas Papers (P) Ltd., (2006) 1 SCC 615, applied

Macson Marbles (P) Ltd. v. Union of India, (2008) 15 SCC 481; Union of India v. SICOM Ltd., (2009) 2 SCC 121, explained and applied

[432] — Ss. 29 and 31 — Relative scope — Seizure and sale under S. 129 by SFC of property of surety/guarantor mortgaged to secure the debt upon failure of borrower to repay loan — Impermissibility — *Held, S. 29 can be invoked by SFC only against properties of defaulter and not against properties of third parties like guarantors/sureties — SFC can proceed against surety/guarantor or property of surety/guarantor mortgaged to SFC by following procedure under S. 31 of SFC Act — Procedure followed by SFC by invoking S. 29 being in disregard of law laid down by Supreme Court, said sale of property of third party is illegal — Appellant auction-purchaser became victim of illegal procedure adopted by SFC — SFC is, thus, directed to refund amount received from appellant with 12% interest p.a. with liberty to recover amounts from defaulter or from surety/guarantor as per law — Costs of Rs 1,00,000 imposed on officers responsible for taking said wrong decision to proceed against property of third party under S. 29 — Contract Act, 1872, S. 128 — Transfer of Property Act, 1882, Ss. 67 and 69* (Paras 5 to 11). *Subhransu Sekhar Padhi* v. *Gunamani Swain*, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126: AIR 2015 SC 542: (2014) 107 ALR 386: (2014) 143 AIC 84.

Bench Strength **2**. Coram: **Jasti Chelameswar** and *Dr A.K. Sikri*, JJ. [Date of decision: 21-8-2014]

Karnataka State Financial Corpn. v. N. Narasimahaiah, (2008) 5 SCC 176, applied

Gunamani Swain v. Orissa State Financial Corpn., WP (C) No. 13033 of 2009, decided on 6-12-2010 (Ori), affirmed

A.P. State Financial Corpn. v. GAR Re-Rolling Mills, (1994) 2 SCC 647, distinguished

[**Ed.**: The key difference between the procedure under Section 29 and Section 31 of the SFC Act it would seem is that under Section 29, the SFC itself has the right to bring the property concerned of defaulter to sale, etc.; while under Section 31, the SFC must apply to the court to order the sale of the property concerned of the defaulter or surety/guarantor.]

[433] — Ss. 46-B and 29 — Workmen's dues vis-à-vis State Financial Corporation's (SFC) dues — Harmonious construction of complete applicable statutory scheme — Precedence of adjudicated and accrued rights of workmen but which had not been claimed — SFC selling secured properties of defunct company to realise its dues claiming preference over adjudicated workmen's dues — Sustainability — *On a harmonious construction of complete applicable statutory Scheme, held, rights accrued to workmen under laws applicable to industrial concerns shall have precedence over rights of SFC — In present case, applications for recovery of workmen's dues from a defunct company under Industrial Disputes Act, 1947 and Payment of Gratuity Act, 1972 had been allowed — Prior to taking action by Labour Commissioner to realise dues from sale proceeds of said company, SFC selling said properties to realise its dues — Contention of SFC that in the absence of initiation of any liquidation proceedings under S. 529 of Companies Act, 1956, rights of workmen did not fructify, and hence rights of workmen cannot have precedence over rights of SFC — Tenability — Held, provisions of SFC Act, 1951 are applicable in addition to, and not in derogation of any other law for the time being applicable to an industrial concern — In instant case, workmen's dues were adjudicated by Labour Courts but realisation of said claims was not done due to laxity of Labour Commissioner — Hence, held, merely because SFC sold said properties before realisation of dues of workmen, rights accrued to workmen under orders of competent courts cannot be destroyed — Industrial Disputes Act, 1947, S. 33-C — Payment of Gratuity Act, 1972, Ss. 14, 7, 8 and 13* (Paras 9 and 10). *Karnataka State Financial Corpn.* v. *Mysore Division Industrial Workers General Union*, (2013) 10 SCC 638: (2014) 2 SCC (L&S) 34: (2014) 1 SCC (Civ) 64: (2013) 4 KCCR 3108: (2014) 2 MPLJ 11: (2014) 2 Mah LJ 507.

Bench Strength **2**. Coram: *H.L. Gokhale* and *Ranjan Gogoi*, JJ. [Date of decision: 3-4-2013]

Central Bank of India v. Siriguppa Sugars & Chemicals Ltd., (2007) 8 SCC 353: (2007) 2 SCC (L&S) 919; Union of

India v. SICOM Ltd., (2009) 2 SCC 121, explained and distinguished

Mysore Division Industrial Workers General Union v. Commr., ILR 2010 KAR 458: (2011) 1 Kant LJ 116, affirmed

[**Ed.**: *See also* the three-Judge Bench ruling in *Maharashtra State Coop. Bank Ltd.* v. *Provident Fund Commr.*, (2009) 10 SCC 123. It would seen that a great deal turns on the specific statutory provisions concerned which on the one hand protect various dues of the workmen and on the other hand protect the secured creditors interests and thereupon, on a harmonious construction thereof.]

(p) Surety/Guarantor

See 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

3. FOREIGN EXCHANGE

Foreign Exchange Management Act, 1999

— Ss. 3(d), 6(3)(e) and 19 *See* 'Foreign Exchange' — Foreign Exchange Management Act, 1999, S. 35, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23

[434] — S. 19(1) — Statutory obligation to pre-deposit penalty amount for hearing appeal — Dispensation with requirement of — Grave financial hardship as a ground for claiming — Failure to establish — Tribunal's refusal to dispense with pre-deposit amount, held, proper — *Held, appellants miserably failed to make out a case justifying order by Tribunal to relieve them of the statutory obligation — Appellants had exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable including those in respect of which orders of attachment may have been passed by judicial and quasi-judicial forums — Appellants deliberately concealed facts relating to their financial condition — Hence, Tribunal did not commit any error by refusing to entertain their prayer for total exemption — Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 — R. 10*

The submission was made by the appellants that they are facing huge financial crises and the Appellate Tribunal committed a serious error by not entertaining their prayer to dispense with the requirement of deposit of the amount of penalty in its entirety. The appellants miserably failed to make out a case which could justify an order by the Appellate Tribunal to relieve them of the statutory obligation to deposit the amount of penalty. The appellants have the exclusive knowledge of their financial condition/status and it was their duty to candidly disclose all their assets, movable and immovable including those in respect of which orders of attachment may have been passed by the judicial and quasi-judicial forums. However, instead of coming clean, they tried to paint a gloomy picture about their financial position, which the Appellate Tribunal rightly refused to accept. If what was stated in the applications filed by the appellants and the affidavit is correct, then the appellants must be in a state of begging which not even a man of ordinary prudence will be prepared to accept. It is clear that the appellants deliberately concealed the facts relating to their financial condition. Therefore, the Appellate Tribunal did not commit any error by refusing to entertain their prayer for total exemption. Hence, the appeals are dismissed. Further time is allowed to the appellants to comply with the direction given by the Appellate Tribunal, failing which the appeals filed by them shall stand automatically dismissed. (Paras 36 and 39). *Ketan V. Parekh* v. *Enforcement Directorate*, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23: AIR 2012 SC 683: (2012) 275 ELT 3: (2012) 110 AIC 129: (2012) 1 LW 705.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

[435] — S. 35 — Appeal against order of Appellate Tribunal — Exclusion of time under S. 14, Limitation Act, 1963 due to jurisdictional defect in case of bona fide proceedings that could/must be initiated under the 1999 Act — Applicability — Appellants lacking in bona fides and indulging in forum shopping — *Where appellants were well conversant with various statutory provisions including FEMA, invoking jurisdiction of Delhi High Court instead of Bombay High Court despite being residents of Bombay and which had exclusive jurisdiction to entertain appeal under S. 35 — Held, manner in which appellants prosecuted the writ petitions before Delhi High Court was with the sole object of delaying compliance with direction given by Appellate Tribunal — Total absence of good faith, which is sine qua non for invoking S. 14 of Limitation Act — Hence, S. 14, not applicable*

There is another reason why the benefit of Section 14 of the Limitation Act cannot be extended to the appellants. All of them are well conversant with various statutory provisions including FEMA. One of them was declared a notified person under Section 3(2) of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 and several civil and criminal cases are pending against him. The very fact that they had engaged a group of eminent advocates to present their cause before the Delhi and the Bombay High Courts

shows that they have the assistance of legal experts and this seems to be the reason why they invoked the jurisdiction of the Delhi High Court and not of the Bombay High Court despite the fact that they are residents of Bombay and have been contesting other matters including the proceedings pending before the Special Court at Bombay. It also appears that the appellants were sure that keeping in view their past conduct, the Bombay High Court may not interfere with the order of the Appellate Tribunal. Therefore, they took a chance before the Delhi High Court and succeeded in persuading the Single Judge of the Court to entertain their prayer for stay of further proceedings before the Appellate Tribunal. The promptness with which the Senior Counsel appearing for the appellant, Kartik K. Parekh made a statement before the Delhi High Court on 7-11-2007 that the writ petition may be converted into an appeal and considered on merits is a clear indication of the appellant's unwillingness to avail remedy before the High Court i.e. the Bombay High Court which had the exclusive jurisdiction to entertain an appeal under Section 35 of the Act. (Para 32)

It is not possible to believe that as on 7-11-2007, the appellants and their advocates were not aware of the judgment of the Supreme Court in *Ambica Industries case*, (2007) 6 SCC 769 whereby dismissal of the writ petition by the Delhi High Court on the ground of lack of territorial jurisdiction was confirmed and it was observed that the parties cannot be allowed to indulge in forum shopping. It is not at all a surprise that after having made a prayer that the writ petitions filed by them be treated as appeals under Section 35, two of the appellants filed applications for recall of that order. No doubt, the Single Judge accepted their prayer and the Division Bench confirmed the order of the Single Judge but the manner in which the appellants prosecuted the writ petitions before the Delhi High Court leaves no room for doubt that they had done so with the sole object of delaying compliance with the direction given by the Appellate Tribunal and by no stretch of imagination it can be said that they were bona fide prosecuting remedy before a wrong forum. Rather, there was total absence of good faith, which is sine qua non for invoking Section 14 of the Limitation Act. (Para 33). *Ketan V. Parekh* v. *Enforcement Directorate*, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23: AIR 2012 SC 683: (2012) 275 ELT 3: (2012) 110 AIC 129: (2012) 1 LW 705.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

[436] — S. 35 — Appeal from order of Appellate Tribunal — Delay beyond prescribed period of limitation in filing — Ss. 5 and 14 of Limitation Act — Applicability — Appellant pursuing remedy before wrong forum — Applications for condonation of delay in filing statutory appeal, whether can be allowed — *Held, prayer made in applications was for condonation of delay and not for exclusion of time spent in prosecuting writ petitions — Appellants thus were seeking to invoke S. 5 of Limitation Act, which, cannot be invoked in view of language of S. 35 — Further, in the applications no mention was made appellants had been prosecuting remedy before a wrong forum with due diligence and in good faith — Hence, S. 14 of Limitation Act also cannot be relied upon for exclusion of the period — Hence, Division Bench's order dismissing applications for condonation of delay, upheld — Limitation Act, 1963, Ss. 5 and 14*

On an information received from Reserve Bank of India that M/s Classic Credit Ltd. and M/s Panther Fincap and Management Services Ltd. had taken a loan of 25 lakh shares each of DSQ Industries Ltd. on 1-3-2011 from M/s Greenfield Investment Ltd., Mauritius and Indus Ind Bank Ltd. with whom M/s Greenfield Investment Ltd. was maintaining NRE account had informed that records did not indicate any such transaction, the Directorate of Enforcement, Mumbai conducted enquiries from different sources including the Securities and Exchange Board of India, Shri Ketan Parekh, M/s Integrated Enterprises (I) Ltd., Chennai and Indsec Securities and Finance Ltd. Thereafter, show-cause notice was issued to M/s Greenfield Investments Ltd., Mauritius; Shri Pravin Guwalewala, Mauritius; Smt Neena Guwalewala, Mauritius; Shri A.K. Sen, Mauritius; M/s Classic Credit Ltd., Mumbai; M/s Panther Fincap and Management Services Ltd., Mumbai; Shri Ketan Parekh; Shri Kartik K. Parekh; Shri Kirit Kumar N. Parekh and Shri Navinchandra Parekh for taking action against them for contravention of the provisions of the Act. After hearing the noticees, the Special Director of Enforcement passed an order whereby he held that some of the noticees had violated Sections 3(*d*) and 6(3)(*e*) of the Act and imposed a penalty of Rs 40 crores on M/s Classic Credit Ltd.; Rs 40 crores on M/s Panther Fincap and Management Services Ltd.; Rs 75 crores on M/s Greenfield Investments Ltd.; Rs 80 crores on Shri Ketan Parekh; Rs 12 crores on Shri Kartik K. Parekh; Rs 60 crores on Shri Pravin Guwalewala and Rs 20 crores on Shri A.K. Sen with a direction that they shall deposit the amount

within 45 days from the date of receipt of the order. The appellants challenged the aforesaid order by filing appeals under Section 19 of the Act. They also filed applications under Rule 10 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 read with Section 19(1) of the Act for dispensing with the requirement of deposit of the amount of penalty. After hearing the counsel for the parties, the Appellate Tribunal passed an order and directed the appellants to deposit 50% of the amount of penalty with a stipulation that if they fail to do so, the appeals will be dismissed. The appellants challenged the aforesaid orders in writ petitions filed in the Delhi High Court. After taking cognizance of the judgment in *Raj Kumar Shivhare case*, (2010) 4 SCC 772, the Single Judge dismissed the writ petitions. Thereafter, the appellants filed appeals under Section 35 of the Act before the Bombay High Court. They also filed applications for condonation of 1056 days' delay. The Division Bench of the Bombay High Court dismissed the applications for condonation of delay by observing that it does not have the power to entertain an appeal filed beyond 120 days and even though in terms of the liberty given by the Delhi High Court, the appellants could have filed appeals within 30 days, but they failed to do so and, therefore, delay in filing the appeals cannot be condoned.

The appellants had thus filed the present appeals.

Dismissing the appeals,

Held :

The question whether the High Court can entertain an appeal under Section 35 of the Act beyond 120 days has to be answered against the appellants in view of settled law. (Para 18)

Even though Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would tantamount to amendment of the legislative mandate by which the special period of limitation has been prescribed, Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum.

Section 14 of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the applications filed by them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by stating that after receiving a copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26-7-2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. Paras 1, 2 and 3 of the applications for condonation of delay which are identical in all the cases. The averments made therein show that there was not even a whisper in the applications filed by the appellants that they had been prosecuting remedy before a wrong forum i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This shows that the appellants were seeking to invoke Section 5 of the Limitation Act, which cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by the Supreme Court. (Paras 30 and 31). *Ketan V. Parekh* v. *Enforcement Directorate*, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23: AIR 2012 SC 683: (2012) 275 ELT 3: (2012) 110 AIC 129: (2012) 1 LW 705.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

[437] — S. 35 — Appeal from order of Appellate Tribunal under — Limitation period prescribed for — Applicability of S. 14 of Limitation Act, 1963, held, not excluded — *Hence, benefit of exclusion of time under S. 14 is available where aggrieved person may have prosecuted with due diligence remedy before a wrong forum — However, S. 5, Limitation Act cannot be invoked because that would tantamount to amendment of legislative mandate by which special period of limitation has been prescribed*

On an information received from Reserve Bank of India that M/s Classic Credit Ltd. and M/s Panther Fincap and Management Services Ltd. had taken a loan of 25 lakh shares each of DSQ Industries Ltd. on 1-3-2011 from M/s Greenfield Investment Ltd., Mauritius and Indus Ind Bank Ltd. with whom M/s Greenfield Investment Ltd. was maintaining NRE account had informed that records did not indicate any such transaction, the Directorate of Enforcement, Mumbai conducted enquiries from different sources including the Securities and Exchange Board of India, Shri Ketan Parekh, M/s Integrated Enterprises (I) Ltd., Chennai and Indsec Securities and Finance Ltd. Thereafter, show-cause notice was issued to M/s Greenfield Investments Ltd., Mauritius; Shri Pravin Guwalewala, Mauritius; Smt Neena

Guwalewala, Mauritius; Shri A.K. Sen, Mauritius; M/s Classic Credit Ltd., Mumbai; M/s Panther Fincap and Management Services Ltd., Mumbai; Shri Ketan Parekh; Shri Kartik K. Parekh; Shri Kirit Kumar N. Parekh and Shri Navinchandra Parekh for taking action against them for contravention of the provisions of the Act. After hearing the noticees, the Special Director of Enforcement passed an order whereby he held that some of the noticees had violated Sections 3(*d*) and 6(3)(*e*) of the Act and imposed a penalty of Rs 40 crores on M/s Classic Credit Ltd.; Rs 40 crores on M/s Panther Fincap and Management Services Ltd.; Rs 75 crores on M/s Greenfield Investments Ltd.; Rs 80 crores on Shri Ketan Parekh; Rs 12 crores on Shri Kartik K. Parekh; Rs 60 crores on Shri Pravin Guwalewala and Rs 20 crores on Shri A.K. Sen with a direction that they shall deposit the amount within 45 days from the date of receipt of the order. The appellants challenged the aforesaid order by filing appeals under Section 19 of the Act. They also filed applications under Rule 10 of the Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 read with Section 19(1) of the Act for dispensing with the requirement of deposit of the amount of penalty. After hearing the counsel for the parties, the Appellate Tribunal passed an order and directed the appellants to deposit 50% of the amount of penalty with a stipulation that if they fail to do so, the appeals will be dismissed. The appellants challenged the aforesaid orders in writ petitions filed in the Delhi High Court. After taking cognizance of the judgment in *Raj Kumar Shivhare case*, (2010) 4 SCC 772, the Single Judge dismissed the writ petitions. Thereafter, the appellants filed appeals under Section 35 of the Act before the Bombay High Court. They also filed applications for condonation of 1056 days' delay. The Division Bench of the Bombay High Court dismissed the applications for condonation of delay by observing that it does not have the power to entertain an appeal filed beyond 120 days and even though in terms of the liberty given by the Delhi High Court, the appellants could have filed appeals within 30 days, but they failed to do so and, therefore, delay in filing the appeals cannot be condoned.

The appellants had thus filed the present appeals.

Dismissing the appeals,

Held :

The question whether the High Court can entertain an appeal under Section 35 of the Act beyond 120 days has to be answered against the appellants in view of settled law. (Para 18)

Even though Section 5 of the Limitation Act cannot be invoked for condonation of delay in filing an appeal under the Act because that would tantamount to amendment of the legislative mandate by which the special period of limitation has been prescribed, Section 14 can be invoked in an appropriate case for exclusion of the time during which the aggrieved person may have prosecuted with due diligence remedy before a wrong forum.

Section 14 of the Limitation Act cannot be relied upon for exclusion of the period during which the writ petitions filed by the appellants remained pending before the Delhi High Court. In the applications filed by them before the Bombay High Court, the appellants had sought condonation of 1056 days' delay by stating that after receiving a copy of the order passed by the Appellate Tribunal, they had filed writ petitions before the Delhi High Court, which were disposed of on 26-7-2010 and, thereafter, they filed appeals before the Bombay High Court under Section 35 of the Act. Paras 1, 2 and 3 of the applications for condonation of delay which are identical in all the cases. The averments made therein show that there was not even a whisper in the applications filed by the appellants that they had been prosecuting remedy before a wrong forum i.e. the Delhi High Court with due diligence and in good faith. Not only this, the prayer made in the applications was for condonation of 1056 days' delay and not for exclusion of the time spent in prosecuting the writ petitions before the Delhi High Court. This shows that the appellants were seeking to invoke Section 5 of the Limitation Act, which cannot be pressed into service in view of the language of Section 35 of the Act and interpretation of similar provisions by the Supreme Court. (Paras 30 and 31). *Ketan V. Parekh* v. *Enforcement Directorate*, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23: AIR 2012 SC 683: (2012) 275 ELT 3: (2012) 110 AIC 129: (2012) 1 LW 705.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

[438] — Ss. 35, 3(d), 6(3)(e) and 19(1) — Delay in filing statutory appeal under S. 35 — Grant of relaxation of period of limitation to pursue statutory remedy — Violation of time-limit specified in order for filing appeal — Dismissal by Division Bench of High Court — *Held, appellants by taking advantage of the liberty given by Single Judge of Delhi High Court, invoked the jurisdiction of Bombay High Court under S. 35, however, while doing so, they violated the*

time-limit specified in the order — Hence, Division Bench rightly observed even though issue relating to jurisdiction of Delhi High Court to grant time to appellants to file appeals is highly debatable, time specified in order passed by Delhi High Court cannot be extended

The issue deserves to be considered from another angle. By taking advantage of the liberty given by the Single Judge of the Delhi High Court, the appellants invoked the jurisdiction of the Bombay High Court under Section 35 of the Act. However, while doing so, they violated the time-limit specified in the order dated 26-7-2010 which, in turn, is based on para 45 of the judgment of the Supreme Court in *Raj Kumar Shivhare*, (2010) 4 SCC 772. Indeed, it is not even the case of the appellants that they had filed appeals under Section 35 of the Act within 30 days computed from 26-7-2010. Therefore, the Division Bench of the Bombay High Court rightly observed that even though the issue relating to jurisdiction of the Delhi High Court to grant time to the appellants to file appeals is highly debatable, the time specified in the order passed by the Delhi High Court cannot be extended. Hence, the impugned order does not suffer from any legal infirmity. (Para 35). *Ketan V. Parekh* v. *Enforcement Directorate*, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23: AIR 2012 SC 683: (2012) 275 ELT 3: (2012) 110 AIC 129: (2012) 1 LW 705.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

4. INTEREST

(a) Arbitral matters/power of arbitrator to award interest

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 31(7)(a) & (b), 28(3) and 34, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

(b) Compensation as interest/Interest on compensation

See also DEBT, FINANCIAL AND MONETARY LAWS — '7.(e) Compensation as interest/Interest on compensation', pp. 682 et seq. in **Vol. 29**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

See CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 166, (2014) 2 SCC 735: (2014) 2 SCC (Civ) 192

— Ss. 166 and 168, (2013) 16 SCC 711: (2014) 5 SCC (Civ) 605

— Ss. 166, 168, 170(b), 171 and 173, (2014) 1 SCC 244: (2014) 1 SCC (Civ) 184

— Ss. 166, 168 and 171, (2014) 11 SCC 178: (2014) 5 SCC (Civ) 605

— Ss. 166, 168, 171 and 173, (2013) 10 SCC 673: (2014) 1 SCC (Civ) 86

— Ss. 166, 168 and 173, (2013) 12 SCC 455: (2014) 1 SCC (Civ) 688

See also TORT LAW — 'Workmen's Compensation Act, 1923', Ss. 4-A and 3, (2014) 2 SCC 298: (2014) 2 SCC (Civ) 77

— Motor vehicle accident case *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 171, 168 and 166, (2013) 15 SCC 45: (2014) 4 SCC (Civ) 384

(c) Consumer cases

See CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

(d) Contractual interest/rate of interest

See CIVIL PROCEDURE CODE, 1908, S. 34 proviso, (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234

(e) Date of commencement/cessation of interest

See also TORT LAW — 'Workmen's Compensation Act, 1923', Ss. 4-A and 3, (2014) 2 SCC 298: (2014) 2 SCC (Civ) 77

— Deposit of amount in court — Cessation of interest thereafter *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 31(7)(a) & (b), 28(3) and 34, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

(f) Delayed Payments (Interest on) to Small Scale and Ancillary Industrial Undertakings Act, 1993

— S. 7 — Applicability to applications under S. 34 Arbitration and Conciliation Act, 1996 to set aside award in favour of small scale industry *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 34, 31(7), 37(1)(b) & (2), (2013) 10 SCC 693: (2014) 1 SCC (Civ) 106

(g) Delayed payments/Withheld amount/Wrongfully detained amount

See CIVIL PROCEDURE CODE, 1908, S. 34 proviso, (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 28, 23, 18, 4 and 6, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

— Contract permitting one party to withhold certain sums of money and have lien thereon and prohibiting interest on such withheld amounts — Interest not payable *See* GOVERNMENT CONTRACTS/TENDERS — 'Lien of employer over contractual amounts', (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

— Refund of amount illegally attached/confiscated — Interest directed to be paid for restitution of status quo ante — Meaning of — Held, the same does not mean that interest is to be computed as per taxation statute *See* INCOME TAX — 'Income Tax Act, 1961', Ss. 241, 244, 244-A, 271, 273 and 281-A, (2011) 15 SCC 640: (2014) 2 SCC (Civ) 740

(h) Development Authority/Housing Board

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Contractual matters (including government contracts and auctions), Art. 226, (2011) 15 SCC 517: (2014) 2 SCC (Civ) 631

(i) Insurance

See INSURANCE — 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

(j) Interest Act, 1978

— **S. 3** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— **Ss. 3 and 4** *See* 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 171, (2013) 16 SCC 585: (2014) 5 SCC (Civ) 559

— Ss. 166, 168, 171 and 173, (2014) 3 SCC 584: (2014) 2 SCC (Civ) 297

— **S. 3(3)(c)** *See* CIVIL PROCEDURE CODE, 1908, Or. 21 R. 1, (2014) 5 SCC 577: (2014) 3 SCC (Civ) 220

[439] — S. 4 — Interest — Liability of State — *Held, liability of State is akin to that of individual in payment of Interest — State is bound to make the party good, just as an individual would be under like circumstances for the money received without right, retained and used it — Contract Act, 1872, S. 72*

Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the amount of tax which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is a debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the residents/deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course. (Para 38). *Union of India* v. *Tata Chemicals Ltd.*, (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553: AIR 2014 SC 3483: (2014) 363 ITR 658.

Bench Strength 2. Coram: *H.L. Dattu* and *S.A. Bobde*, JJ. [Date of decision: 26-2-2014]

— **S. 4(1)** *See* INCOME TAX — 'Refund', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— 'Tax at Source/Deduction/TDS/TAS', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

[440] — S. 4(1) — Right to interest — Nature and scope of — Held, interest is a kind of compensation for use and retention of money collected unauthorisedly — *Obligation to refund money received and retained without right implies and carries with it the right to interest — Whenever money is received by a party which* ex ae quo et bono *ought to be refunded, the right to interest follows, as a matter of course — CPC, 1908, S. 34 — Contract Act, 1872, S. 72*

A "tax refund" is a refund of taxes when the tax liability is less than the tax paid. As per the old section an assessee was entitled to payment of interest on the amount of taxes refunded pursuant to an order passed under the IT Act, including an order passed in an appeal. In the present fact scenario, the deductor/assessee had paid taxes pursuant to a special order passed by the assessing officer/Income Tax Officer. In the appeal filed against the said order the deductor/assessee has succeeded and a direction has been issued by the appellate authority to refund the tax paid. The amount paid by the resident/deductor was retained by the Government till a direction was issued by the appellate authority to refund the same. When the said amount is refunded it should carry interest as a matter of course. Interest is a kind of compensation for use and retention of the money collected unauthorisedly by the Department. When the collection is illegal, there is corresponding obligation on the Revenue to refund such amount with interest inasmuch as it has retained and enjoyed the money deposited. Even the Department has understood the object behind insertion of Section 244-A of the IT Act, as that, an assessee is entitled to payment of interest for money remaining with the Government which would be refunded. There is no reason to restrict the same to an assessee only without extending a similar benefit to a resident/deductor who has deducted tax at source and deposited the same before remitting the amount payable to a non-resident/foreign company. (Para 37)

Providing for payment of interest in case of refund of amounts paid as tax or deemed tax or advance tax is a method now statutorily adopted by fiscal legislation to ensure that the amount of tax

which has been duly paid in prescribed time and provisions in that behalf form part of the recovery machinery provided in a taxing statute. Refund due and payable to the assessee is a debt-owed and payable by the Revenue. The Government, there being no express statutory provision for payment of interest on the refund of excess amount/tax collected by the Revenue, cannot shrug off its apparent obligation to reimburse the residents/deductors lawful monies with the accrued interest for the period of undue retention of such monies. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest. Whenever money has been received by a party which *ex ae quo et bono* ought to be refunded, the right to interest follows, as a matter of course. (Para 38). *Union of India* v. *Tata Chemicals Ltd.*, (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553: AIR 2014 SC 3483: (2014) 363 ITR 658.

Bench Strength **2**. Coram: *H.L. Dattu* and *S.A. Bobde*, JJ. [Date of decision: 26-2-2014]

(k) Land acquisition and requisition

See LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 28, 23, 18, 4 and 6, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

(l) Pre-litigation or pre-reference interest

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 31(7)(a) & (b), 28(3) and 34, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

(m) Rate of interest/Enhancement/Reduction/Usury prohibition

See CIVIL PROCEDURE CODE, 1908, S. 34 proviso, (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234

(n) Refund of tax

See 'Interest' — Interest Act, 1978, S. 4, (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— S. 4(1), (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— **Liability of State** *See* INCOME TAX — 'Tax at Source/Deduction/TDS/TAS', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

(o) Refundable amount/refund/refund of deposit/court deposit or order

See also DEBT, FINANCIAL AND MONETARY LAWS — '7.(zg) Refundable amount/refund/refund of deposit/court deposit or order', pp. 931 et seq. in **Vol. 29**, *Complete Digest of Supreme Court Cases*, 2nd Edn.

See also 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

See also 'Interest' — Interest Act, 1978, S. 4, (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— S. 4(1), (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 22(1)(b), (2014) 13 SCC 522: (2014) 5 SCC (Civ) 728

See also INCOME TAX — 'Refund', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

[441] — Interest on refund — When not warranted — Benefit arising to payer to whom refund of consideration made on cancellation of conveyance i.e. use of property before cancellation of conveyance — *Contract Act, 1872, S. 72. Vasu P. Shetty* v. *Hotel Vandana Palace*, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304: AIR 2014 SC 1947: (2014) 144 AIC187: (2014) 186 Comp Cas 82: (2014) 3 CTC 193: (2014) 107 ALR 714: (2014) 4 LW 770.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 22-4-2014]

— **Liability of State** *See* INCOME TAX — 'Tax at Source/Deduction/TDS/TAS', (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

[442] — Rate of interest payable — *High Court, held, was right in allowing the appeals and directing the developer to return the amount of the purchase price received by it from the plaintiffs with interest @ 9% p.a. from the date when the letter of cancellation was written by the developer to the plaintiffs — Said direction is just and proper, however, looking to the rising price and inflationary trend in the country, the rate of interest enhanced from 9% p.a. to 12% p.a. — Interest Act, 1978, Ss. 3 and 4 — Contract Act, 1872, S. 70* (Para 24). *Hansa V. Gandhi* v. *Deep Shankar Roy*, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734: AIR 2013 SC 2873: (2013) 116 Cut LT 457.

Bench Strength **3**. Coram: *R.M. Lodha*, **Anil R. Dave** and *Ranjan Gogoi*, JJ. [Date of decision: 18-4-2013]

— **Refund of amount illegally attached/confiscated — Interest directed to be paid for restitution of status quo ante — Meaning of — Held, the same does not mean that interest is to be computed as per taxation statute** *See* INCOME TAX — 'Income Tax Act, 1961', Ss. 241, 244, 244-A, 271, 273 and 281-A, (2011) 15 SCC 640: (2014) 2 SCC (Civ) 740

[443] — Refund of amount to which appellant was not entitled directed with 9% interest from date of receipt till date of repayment — *CPC, 1908, S. 144 — Contract Act, 1872, S. 70*

The appellant-plaintiff was carrying on business prior to 1-1-1978 in the appurtenant land as a

tenant. On 15-10-1977, the landlady (Respondent 1-Defendant 1) (R-1) entered into an agreement with him for the sale of the said land and two other premises belonging to her for a total consideration of a certain amount, part of which was paid as earnest money. The said agreement provided that the sale deed would be executed within six months from the date of agreement, or upon intimation by the vendor, as she had to obtain permission from the competent authority under Section 27, Urban Land (Ceiling and Regulation) Act, 1976 (the 1976 Act), the necessary income tax clearances and the sub-division permission from the municipal corporation. The said suit land was also in the possession of the landlady, and had partly been occupied by Defendant 2-respondent. Thereafter, the appellant-plaintiff paid non-agricultural assessment tax. He received a legal notice dated 18-6-1979 from R-1 stating that she had obtained the requisite statutory permissions from the authorities concerned.

However, R-1 tried to sell the suit property to some other persons. Therefore, the appellant-plaintiff got a public notice published in local newspapers on 29-4-1980 and 30-4-1980, in respect of the suit property, mentioning the existence of the said agreement to sell between the parties and warning that no other person must purchase the same. Even then, the GPA-holder of R-1 entered into two different agreements to sell with Respondent 2-Defendant 3 on 29-4-1980/ 30-4-1980, for a piece of open land.

The appellant-plaintiff filed a suit on 23-6-1983 for specific performance of the agreement to sell dated 15-10-1977 and for ignoring the agreement sell in favour of respondent/Defendants 3, 6 and 7.

During the pendency of the said suit, R-1 executed a sale deed, and got the same registered on 29-4-1985, in favour of Respondent 2-Defendant 3 with respect to the part of the suit property as specified. The GPA-holder registered another sale deed in favour of Respondent 2-Defendant 3 on 30-4-1985, with respect to part of the suit property. The trial court decreed the suit except for a small area, which had been purchased by Defendant 6 whom the trial court held to be bona fide purchaser for consideration without notice. The appellant-plaintiff was directed to deposit the balance consideration amount in the trial court within a period of four weeks, and the appellant-plaintiff duly deposited the same on 6-4-1991.

The High Court held, that the appellant-plaintiff was not ready and willing to perform his part of the contract, and therefore, there was no occasion to decide issues regarding the status of the subsequent purchasers. However, the High Court added that the appellant-plaintiff would be entitled to get the sale deed executed in respect of the said land, excluding the land sold to Defendants 3, 6 and 7 at the rate of Rs 750 per square yard, adjusting the amount that had already been paid.

R-1 filed a review petition before the High Court. During the pendency of the said review petition, both the sides preferred the present appeals. The review petition filed by R-1 was later dismissed by an order. The said order was also challenged in the connected Appeals Nos. 2888 and 4459 of 2005.

Allowing the appeals, of the appellant-plaintiff and dismissing the connected appeals,

Held :

So far as the notice of the agreement between the appellant and R-1 i.e. the prior contract for sale (CFS) is concerned, the trial court after taking note of the recital of the said agreement in the subsequent agreement to sell and sale deed also, has held, that, so far as the land sold to the respondents other than Respondent 6, the parties had been fully aware of the same. Only Respondent 6 had no such notice. Thus, the appellant-plaintiff *S* the holder of the prior agreement to sell is entitled to get the sale deed executed and registered, with respect to all the suit land available now (minus the land acquired and the land purchased by Respondent 6). (Paras 24 and 26)

However, in the facts and circumstances of the case, as the appellant-plaintiff *S* has not yet acquired any title over the land, he has no right to receive compensation to the tune of Rs 29,47,112. However, he withdrew the said amount by giving an undertaking to return the said amount to the landlady in case any such order was passed by the court in that regard. The appellant is directed to refund the amount of compensation received by him to the landlady within a period of three months, along with 9% interest from the date of receipt till the date of payment. (Paras 25 and 27). *S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23: AIR 2013 SC Supp 265: (2013) 98 ALR 241: (2013) 125 AIC 25.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 10-4-2013]

Anjum Jehan v. K. Hanuman Goud, CCCA No. 34 of 1991, decided on 10-6-2003 (AP), reversed

(p) Restitutionary interest

See also 'Interest' — Refundable amount/ refund/refund of deposit/court deposit or order, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Refund of amount illegally attached/confiscated — Interest directed to be paid for restitution of status quo ante — Meaning of — Held, the same does not mean that interest is to be

computed as per taxation statute *See* INCOME TAX — 'Income Tax Act, 1961', Ss. 241, 244, 244-A, 271, 273 and 281-A, (2011) 15 SCC 640: (2014) 2 SCC (Civ) 740

5. NEGOTIABLE INSTRUMENTS ACT, 1881

[444] — Ch. XVII and Ss. 138 to 142 — Criminalisation of dishonour of cheque — Intendment of 1988 Amendment Act — Ascertainment of — Consideration of Parliamentary debates — *Held, the intendment of the amendment was to enhance acceptability of cheques — Parliament was aware that they were converting a civil liability into criminal content inter alia by the deeming fiction of culpability in terms of the pandect comprising S. 138 and the succeeding sections, which severely curtail defences to prosecution — Parliament was also aware that the offence of cheating, etc. already envisaged in IPC, continued to be available* (Para 15). *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength 3. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[445] — Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988] and Ss. 138 to 147 — Penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer — Object of — To encourage culture of use of cheques and enhancing credibility of the instrument

The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated in order to encourage the culture of use of cheques and enhancing the credibility of the instrument. The insertion of the new Chapter and amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominees director from prosecution under the Act. (Para 13). *Indra Kumar Patodia* v. *Reliance Industries Ltd.*, (2012) 13 SCC 1: (2012) 4 SCC (Cri) 209: (2014) 2 SCC (Civ) 103: AIR 2013 SC 426: 2013 Cri LJ 1179: (2013) 1 CTC 230: (2012) 4 KLT 822: (2013) 122 AIC 129: (2013) 1 Cal LJ 23.

Bench Strength 2. Coram: **P. Sathasivam** and *Ranjan Gogoi*, JJ. [Date of decision: 22-11-2012]

— Ss. 5, 33 and 61 *See* S. 64

[446] — Ss. 64, 61, 33 and 5 — Bill of exchange — Presenting to acceptor named in bill of exchange, held, is mandatory for payment — Failure to present bill of exchange to acceptor — Effect — Liability of other parties, when absolved — Effect of presentation to alleged co-acceptor — *Held, bill of exchange must be presented for payment to acceptor named in the bill — Failure to present bill of exchange to named acceptor will absolve liability of other parties to it — Even presentation to alleged co-acceptor will not change the situation if presentation of bill of exchange is not made to acceptor itself — In the instant case, Bank (R-1) refused to accept bill of exchange presented by appellant-plaintiff claiming to be endorsee and holder of bill of exchange — Suit filed by appellant-plaintiff for recovery of amount of bill of exchange decreed by trial court — In appeal, rejecting contention that co-acceptance by R-1 (allegedly done later by a manager of R-1, but unauthorisedly) should be treated as acceptance, Division Bench of High Court set aside decree holding that said bill of exchange was not a validly executed instrument as appellant-plaintiff failed to adduce evidence as to its execution — Sustainability — On facts, acceptor of said bill of exchange is L, who was not impleaded in the suit — Attempt to amend suit by showing R-1 as co-acceptor instead of acceptor not accepted by Supreme Court in earlier round of litigation — Further, action of manager of R-1 who is said to have co-accepted said bill does not bind R-1 since he had acted in excess of his authority as he was not authorised to accept any bill of exchange on behalf of Bank — Also, said manager had co-accepted said bill at Bombay while he was manager of a branch of R-1 in Calcutta at that time, and non-existence of firms shown as endorsers and acceptor indicating fraud and collusion — Hence, held, findings of Division Bench of High Court that bill of exchange was not a validly executed instrument and R-1 was not acceptor of bill of exchange are unimpeachable — Since case of appellant that R-1 was acceptor of bill of exchange is not proved, held, R-1 is not liable for payment — Even if R-1 is*

treated as co-acceptor, in instant case, admittedly said bill having not presented to L, the acceptor named in the bill, held, other parties thereto are totally absolved of their liability — Hence, held, no interference called for with High Court's order — Contract Act, 1872, Ss. 227 and 228

Dismissing the appeal,

Held :

On a careful consideration of the materials on record, the Division Bench found that there was no material to hold that the alleged bill of exchange was a validly executed instrument as the appellant-plaintiff failed to adduce any evidence in regard to its execution. The Division Bench further held that it was incumbent upon the appellant-plaintiff to prove the execution of the bill of exchange and its validity as it was repeatedly asserted in the written statement filed by the respondent Bank that the alleged bill of exchange was brought into existence by practising fraud and collusion and it was not a valid instrument and binding on the respondent. The Division Bench further found that by allegedly giving the guarantee for payment under the guise of "co-acceptance" of the bill, the Branch Manager in excess of his authority and the so-called co-acceptance endorsed by him could not and did not bind the respondent Bank. The Division Bench also found that the circumstances in which the alleged bill of exchange was said to have been drawn up and accepted by *L* Enterprise and "co-accepted" by the respondent Bank appeared to be highly curious and unusual and lent credence to the case of the respondent Bank that the bill of exchange was fraudulent. (Paras 9 and 10)

The statutory requirement of presentment under Section 64 of the Negotiable Instruments Act for payment is mandatory and the words "must be" clearly expressed the legislative intent. The consequence of failure to present is also made clear: that the failure will absolve the liability of any of the "other parties thereto". It is also made clear that in the case of a bill of exchange it must be presented for payment to the "acceptor". In this case, admittedly the bill was not presented to *L*, the named acceptor in the bill and as a consequence "other parties thereto" were totally absolved of their liability. (Para 11)

The Division Bench also rejected the contention made on behalf of the appellant-plaintiff that co-acceptance by the respondent Bank should be treated as acceptance. The Division Bench pointed out that the case of the appellant-plaintiff in the plaint is that the respondent Bank is the "acceptor". After receiving the written statement filed by the respondent Bank, the appellant-plaintiff wanted to introduce the case of co-acceptance by the Bank. The attempt to amend the plaint did not succeed right up to this Court. Hence, the case of the appellant-plaintiff was liable to fail, as on the face of the document the Bank was not the acceptor of the bill of exchange. (Paras 12 and 13). *Britannia Industries Ltd.* v. *Punjab National Bank*, (2013) 10 SCC 642: (2014) 1 SCC (Civ) 69: (2013) 116 Cut LT 453: (2013) 100 ALR 839: (2014) 2 MPLJ 14: (2014) 2 Mah LJ 515.

Bench Strength 2. Coram: **Aftab Alam** and *Ranjana P. Desai*, JJ. [Date of decision: 17-4-2013]

Punjab National Bank v. Britannia Industries Ltd., (2001) 2 Cal LT 219, affirmed

[447] — Ss. 118, 139 and 138 — Dishonour of cheque — Drawing presumption under S. 118 r/w S. 139 — Prerequisites for, when cheque is for repayment of a loan/advanced money — Proof required on the part of complainant — *Held, in order to draw presumption under S. 118 r/w S. 139, burden lies on complainant to show: (i) that he had the requisite funds for advancing the sum of money/loan in question to accused, (ii) that the issuance of cheque by accused in support of repayment of money advanced was true, and (iii) that the accused was bound to make payment as had been agreed while issuing cheque in favour of complainant — In present case, complainant not aware of the date when substantial amount of Rs 1,50,000 was advanced by him to appellant-accused — Respondent complainant failed to produce relevant documents in support of the alleged source for advancing money to accused — Complainant also not aware as to when and where the transaction took place for which the cheque in question was issued to him by accused — Complainant also not sure as to who wrote the cheque and making contradictory statements in this regard — In view of said serious defects/lacunae in evidence of complainant, judgment of High Court reversing acquittal of accused by trial court, held, was perverse and could not be sustained — Acquittal restored* (Paras 6 to 12)

Allowing the appeal, the Supreme Court decided as above.

Held :

In order to draw the presumption under Section 118 read along with Section 139 of the Negotiable Instruments Act in a case where the cheque drawn was for repayment of advanced money, the burden was heavily upon the complainant to have shown that he had the required funds for having advanced

the money to the accused; that the issuance of the cheque in support of the said payment advanced was true; and that the accused was bound to make the payment as had been agreed while issuing the cheque in favour of the complainant. (Para 9)

In the instant case, the complainant (i.e. the respondent herein) was not aware of the date when substantial amount of Rs 1,50,000 was advanced by him to the appellant, he was not sure as to who wrote the cheque, and he was not even aware when exactly and where exactly the transaction took place for which the cheque came to be issued by the appellant. The complainant once stated in his cross-examination that the cheque was in the handwriting of the accused and the very next moment he took a diametrically opposite stand that it was not in the handwriting of the accused and that it was written by the complainant himself, by further reiterating that the amount in words was written by him. (Para 10)

The various defects in the evidence of the complainant, as noted by the trial court, were simply brushed aside by the High Court without assigning any valid reason. Such a serious lacuna in the evidence of the complainant, which strikes at the root of a complaint under Section 138, having been noted by the trial Judge, which factor was failed to be examined by the High Court while reversing the judgment of the trial court, would vitiate the ultimate conclusion reached by the High Court. Consequently, the judgment of the High Court would amount to a perverse one. Hence, the same cannot be sustained and is set aside. (Paras 6, 11 and 12). *John K. Abraham* v. *Simon C. Abraham*, (2014) 2 SCC 236: (2014) 1 SCC (Cri) 791: (2014) 1 SCC (Civ) 785: 2014 Cri LJ 2304: (2014) 3 Mah LJ 280: (2014) 2 MPLJ 328: (2014) 1 KLT 90: (2014) 206 DLT 234: (2014) 102 ALR 732: (2014) 133 AIC 27.

Bench Strength **2**. Coram: *S.S. Nijjar* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 5-12-2013]

Simon C. Abraham v. State of Kerala, Criminal Appeal No. 452 of 2004, decided on 15-12-2010 (Ker), reversed

— S. 138 *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; Ch. XVII; S. 118; S. 142; S. 143; S. 147

— (2014) 2 SCC 255: (2014) 1 SCC (Civ) 789

— (2014) 7 SCC 215: (2014) 3 SCC (Civ) 680

[448] — S. 138 — Dishonour of cheque — Issuance of notice — Irrelevancy regarding territorial jurisdiction of court — *Dishonoured cheques were drawn on appellant's Bank, Axis Bank, Bangalore — Subsequently, on presentation of cheques for encashment by respondent through its bankers, namely, Standard Chartered Bank, Bangalore, they were dishonoured — Judicial Magistrate, Gurgaon, Haryana, issued summons to appellant — High Court holding that since notice had been dispatched from Gurgaon, Haryana and additionally, a response thereto was dispatched to and received at Gurgaon, courts at Gurgaon possessed jurisdiction to entertain and decide the complaint — Held, issuance of notice has no relevance to question of territorial jurisdiction under S. 138 of NI Act — Courts at Gurgaon do not possess territorial jurisdiction to entertain present proceedings under S. 138 of NI Act solely because on the instructions of respondent, a legal notice of demand has emanated from that city — Complainant permitted to re-file complaint in proper court in Bangalore. Shivgiri Associates* v. *Metso Mineral (India) (P) Ltd.*, (2014) 12 SCC 366: (2014) 6 SCC (Cri) 723: (2014) 5 SCC (Civ) 124.

Bench Strength **2**. Coram: *T.S. Thakur* and **Vikramajit Sen**, JJ. [Date of decision: 20-8-2014]

Dashrath Rupsingh Rathod v. State of Maharasthra, (2014) 9 SCC 129; Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720: (2009) 1 SCC (Cri) 610, followed

Shivgiri Associates v. Metso Mineral (India) (P) Ltd., Criminal Misc. No. M-32999 of 2010, order dated 19-7-2013 (P&H), reversed

Shivgiri Associates v. Metso Minerals (India) (P) Ltd., (2014) 12 SCC 366 (F5), recalled

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[449] — S. 138 — Dishonour of cheque — Presentation of same cheque again for encashment after the same is dishonoured, and the filing of complaint only upon repeated dishonour — Right as to — Reiterated, is available

On dishonour of the cheque in question on 25-10-2008, although a legal notice dated 27-10-2008 was issued to the appellant (i.e. the drawer of the cheque) by making a demand for payment of the amount of the said cheque in terms of Section 138, NI Act, but no complaint was filed under Section 138, NI Act on the basis of that notice. Thereafter, the said cheque was again presented before the Bank on 10-11-2008 for encashment, but it was again dishonoured. Consequently, another legal notice dated 17-12-2008 was issued to the appellant on the basis of the said dishonour of the cheque on 10-11-2008. On no response to the said notice dated 17-12-2008, the instant complaint under Section 138, NI Act was filed against the appellant by Respondent 2 on the basis of the notice dated 17-12-2008. The appellant approached the High Court under Section 482 CrPC for quashing of the said complaint on the ground that it was untenable as it was clearly time-barred and not filed within the stipulated period prescribed in law. The High Court dismissed the petition filed under Section 482 CrPC. Hence, the present appeal.

Allowing the appeal and quashing the complaint,

Held :

The complainant had not filed the complaint on the dishonour of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under Section 138, NI Act. This aspect is already authoritatively determined by the Supreme Court in *MSR Leathers*, (2013) 1 SCC 177. To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant. (Para 8). *Kamlesh Kumar* v. *State of Bihar*, (2014) 2 SCC 424: (2014) 1 SCC (Cri) 839: (2014) 2 SCC (Civ) 83: AIR 2014 SC 660: 2014 Cri LJ 1071: (2014) 1 CTC 329: (2014) 4 Mah LJ 30: (2014) 2 MPLJ 672: (2014) 118 Cut LT 47: (2014) 133 AIC 42: (2014) 2 Cal LT 1.

Bench Strength 2. Coram: *K.S.P. Radhakrishnan* and **Dr A.K. Sikri**, JJ. [Date of decision: 11-12-2013]

[450] — S. 138 — Dishonour of cheque — Territorial jurisdiction of courts to try complaint — *Reiterated, essential components of offence under S. 138 are: (i) drawing of cheque; (ii) presentation of cheque to bank; (iii) returning the cheque unpaid by drawee bank; (iv) giving notice to the drawer of the cheque demanding payment of the cheque amount, and (v) failure of the drawer to make payment within 15 days of receipt of notice — It is not necessary that all these acts should take place in same locality and may take place at five different places — As all these acts are necessary for constituting offence under S. 138, court at any place where any of these acts has taken place has jurisdiction to try offence under S. 138 — Respondent-accused issued cheque to appellant complainant at Shopian and it was presented to his bank at Sopore — When cheque was dishonoured, he initiated proceedings before the Magistrate at Sopore — Respondent-accused raised plea of territorial jurisdiction of trial court — Trial court observed that it had jurisdiction, whereas High Court quashed complaint — Untenability of — Held, cheque was presented by respondent-accused and it was presented at Sopore —*

Therefore, court at Sopore had territorial jurisdiction to try complaint — Hence, quashment of complaint was untenable — Complaint restored — CrPC, 1973, Ss. 177, 178, 179 and 482 — Jammu and Kashmir CrPC, Smvt. 1989 (24 of 1989), S. 561-A (Paras 5 and 6). *FIL Industries Ltd.* v. *Imtiyaz Ahmed Bhat*, (2014) 2 SCC 266: (2014) 4 SCC (Cri) 58: (2014) 1 SCC (Civ) 800: (2014) 3 Mah LJ 298: (2014) 2 MPLJ 320.

Bench Strength 2. Coram: *A.K. Patnaik* and *J.S. Khehar*, JJ. [Date of decision: 12-8-2013]

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284, followed

Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720: (2009) 1 SCC (Civ) 332: (2009) 1 SCC (Cri) 610, distinguished

Imtiyaz Ahmad Bhat v. FIL Industries Ltd., AN No. 179 of 2011 and Criminal Misc. Petition No. 431 of 2011, order dated 2-6-2012 (J&K), reversed

***Followed in** Devendra Kishanlal Dagalia v. Dwarkesh Diamonds (P) Ltd., (2014) 2 SCC 246 at p. 252; Escorts Ltd. v. Rama Mukherjee, (2014) 2 SCC 255 at p. 263*

***Overruled in** Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 at pp. 147, 162-63*

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[451] — S. 138 — Dishonour of post-dated cheque made towards advance payment — Emphasised, existence of legally enforceable debt or other liability is an essential condition for constitution of offence under S. 138 — *Cheque issued for advance payment in present case did not show any existing liability in failed transaction as agreed materials were not supplied — Hence, no liability under S. 138 made out (*Quaere*: would the result be different if the goods/services for which the advance payment has been made, have been duly supplied?) — CrPC, 1973, S. 482*

The appellant purchaser placed two purchase orders with the respondent supplier by issuing two separate cheques towards advance payment. After some time, deal between parties got cancelled as goods were not supplied. The respondent supplier tried to supply goods, but it was refused by the appellant purchaser. Complaint under Section 138 was made by the respondent supplier. The trial court issued summons, and it was challenged by the appellant purchaser before the Sessions Court. Issuance of process was quashed. However, the High Court set aside the order passed by the Sessions Court. Hence the present appeal.

Allowing the appeal,

Held :

The Explanation appended to Section 138 of the NI Act explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is a sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability. (Para 9)

If at the time of entering into a contract, it is one of the conditions of the contract that the appellant purchaser had to pay the amount in advance and there is breach of such condition then the appellant purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. (Para 15). *Indus Airways (P) Ltd.* v. *Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539: (2014) 6 SCC (Cri) 845: (2014) 5 SCC (Civ) 138: (2014) 5 LW 340: (2014) 3 CTC 721: (2014) 138 AIC 99: (2014) 5 LW 16: (2014) 2 Cal LJ 134: (2014) 3 Guj LR 2482.

Bench Strength **2**. Coram: **R.M. Lodha** and *Shiva Kirti Singh*, JJ. [Date of decision: 7-4-2014]

Swastik Coaters (P) Ltd. v. Deepak Bros., 1997 Cri LJ 1942 (AP); Shanku Concretes (P) Ltd. v. State of Gujarat, 2000 Cri LJ 1988 (Guj); Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., (1999) 1 CTC 6 (Mad); Supply House v. Ullas, 2006 Cri LJ 4330 (Ker), approved

Magnum Aviation (P) Ltd. v. State, (2010) 172 DLT 91: (2010) 118 DRJ 505, reversed

Mojj Engg. Systems Ltd. v. A.B. Sugars Ltd., (2008) 154 DLT 579, overruled

[**Ed.**: *See* also *Shri Ishar Alloy Steels Ltd.* v. *Jayaswals Neco Ltd.*, (2001) 3 SCC 609: 2001 SCC (Cri) 582; *Sudhir Kumar Bhalla* v. *Jagdish Chand*, (2008) 7 SCC 137: (2008) 3 SCC (Cri) 11; *Kumar Exports* v. *Sharma Carpets*, (2009) 2 SCC 513; *Rangappa* v. *Sri Mohan*, (2010) 11 SCC 441: (2011) 1 SCC (Cri) 184; *Rev Mother Marykutty* v. *Reni C. Kottaram*, (2013) 1 SCC 327; (2013) 1 SCC (Cri) 486.]

[452] — S. 138 — Offence of dishonour of cheque committed along with other offences in a single transaction — Territorial jurisdiction — Exception to general rule of launch of prosecution against drawer of the cheque only before the court within whose jurisdiction the dishonour takes place (*see* Shortnote *A in SCC*) — *Held, all remedies under IPC and CrPC are available to such a payee if he chooses to pursue this course of action, rather than a complaint under S. 138 of the NI Act — He can also always file a civil suit for recovery wherever the cause of action arises in civil law — Penal Code, 1860, S. 420 — CrPC, 1973, Ss. 177 to 179, 182, 184 and 220. Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength **3**. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

***Applied in** Vinay Kumar Shailendra v. Delhi High Court Legal Services Committee, (2014) 10 SCC 708*

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[453] — S. 138 — Territorial jurisdiction — Place where statutory notice under S. 138, NI Act, 1881 issued/where cheque was presented (presentation not being to drawee Bank), or, place where cheque was issued — Relevancy to confer jurisdiction — *Petitioners seeking transfer of complaint filed under S. 138, NI Act, 1888 from Gurgaon (where statutory notices were issued and cheque presented) to competent court at Bangalore (where cheque in question was issued) — Respondent complainant claiming jurisdiction of courts at Gurgaon because he had issued statutory notices under S. 138 from there/presented cheque there — Held, mere issue of statutory notice cannot by itself confer jurisdiction upon Court to take cognizance under S. 138 — Further held, presentation of cheque at place of choice of complainant also confers no jurisdiction on court concerned unless presentation of the cheque is to the drawee bank — Transfer of complaint from Gurgaon to competent court at Bangalore, directed — CrPC, 1973, Ss. 406 and 177* (Paras 5 and 6). *Sree Mahesh Stationaries* v. *Indiabulls Financial Services Ltd.*, (2014) 8 SCC 880: (2014) 6 SCC (Cri) 151: (2014) 4 SCC (Civ) 654: (2014) 4 MPLJ 447: (2014) 144 AIC 267: (2014) 6 Mah LJ 529: 2014 Cri LJ 4853.

Bench Strength **2**. Coram: **T.S. Thakur** and *Chockalingam Nagappan*, JJ. [Date of decision: 5-8-2014]

Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720: (2009) 1 SCC (Civ) 332: (2009) 1 SCC (Cri) 610; Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129; Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609: 2001 SCC (Cri) 582, applied

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has

filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[454] — S. 138 — Territorial jurisdiction — Place where statutory notices under S. 138, NI Act, 1881 were issued — Relevancy to confer jurisdiction on court — *Petitioners seeking transfer of complaint under S. 138, NI Act, 1881 from court at New Delhi to competent court at Pondicherry — Complainant justifying institution of suit at New Delhi on solitary ground that statutory notices demanding payment of cheque amount had been issued from Delhi — Held, mere issue of such statutory notice not sufficient to vest Delhi court with jurisdiction to entertain complaint — Considering that cheque in question was dishonoured at Vellore where bank on which it was drawn is located, complaint directed to be transferred to competent court at Vellore — CrPC, 1973, Ss. 406 and 177. Apex Distributors* v. *Timex Group India Ltd.*, (2014) 8 SCC 878: (2014) 6 SCC (Cri) 149: (2014) 4 SCC (Civ) 652.

Bench Strength **2**. Coram: **T.S. Thakur** and *Chockalingam Nagappan*, JJ. [Date of decision: 5-8-2014]

Harman Electronics (P) Ltd. v. National Panasonic India (P) Ltd., (2009) 1 SCC 720: (2009) 1 SCC (Civ) 332: (2009) 1 SCC (Cri) 610; Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, applied

K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284, held, overruled

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[455] — S. 138 — Territorial jurisdiction for filing of cheque dishonour complaint, held, is

restricted to the court within whose territorial jurisdiction the offence is committed, which is the location where the cheque is dishonoured i.e. returned unpaid by the bank on which it is drawn — Thus, held, place of issuance or delivery of the statutory notice or where the complainant chooses to present the cheque for encashment by his bank are not relevant for purposes of determining territorial jurisdiction for filing of cheque dishonour complaints — Complainant is statutorily bound to comply with Ss. 177 to 179 CrPC and therefore the place or situs where the S. 138, NI Act complaint is to be filed is not of the choosing of complainant — Ishar Alloy Steels, *(2001) 3 SCC 609 followed and* K. Bhaskaran, *(1999) 7 SCC 510 overruled on this point — Judgment in present matter impacting pending cases — Further directions passed to eradicate any legal complications — Directed, the category of complaint cases where proceedings have gone to the stage of S. 145(2), NI Act or beyond shall be deemed to have been transferred from the court ordinarily possessing territorial jurisdiction, as herein clarified, to the court where it is presently pending — All other complaints shall be returned to the complainant for filing in the proper court — Thus, criminal appeals pending before Supreme Court on the issue of territorial jurisdiction disposed of in light of law laid down herein — CrPC, 1973, Ss. 177 to 179. Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength 3. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

Apex Distributors v. Timex Group India Ltd., (2014) 8 SCC 878; Sree Mahesh Stationaries v. Indiabulls Financial Services Ltd., (2014) 8 SCC 880; Vinay Kumar Shailendra v. Delhi High Court Legal Services Committee, (2014) 10 SCC 708, impliedly superseded

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[456] — S. 138 r/w S. 141 — Complaint under S. 138 against Company and its Directors — Necessary averments to be made in complaint to proceed against Directors — *Held, it is mandatory to allege that accused Directors were in charge of and responsible for conduct of business of Company at the time the offence was committed*

— However, as no particular form is prescribed, it may not be necessary to reproduce the words of S. 141 — If reading of complaint shows, and, substance of accusation discloses the necessary, averments, that would be sufficient — Further held, it may not be necessary to allege and prove that, in fact, such Directors had any specific role in respect of transaction leading to issuance of cheque — On facts, held, allegations in complaint under S. 138 that business and financial affairs of accused Company used to be decided, organised and administered by accused officials (like Chairman, MD, Deputy MD, etc.) of Company and while doing so, they used to consult accused Directors (AK and VP), would not mean that accused Directors were in charge of and responsible for conduct of business of Company — In absence of essential averments, complaint qua accused Directors (AK and VP), quashed — CrPC, 1973, S. 482

The Gujarat State Fertilizer Co. Ltd. (complainant) filed several complaints against Esslon Synthetics Ltd. (accused Company), its Chairman, Managing Director and other Directors including one *AK* and *VP* alleging commission of an offence under Section 138 of the Negotiable Instruments Act, 1881 (NI Act). Taking cognizance of the offence, the Magistrate issued the process/summons to all accused persons to face trial for commission of offence under Section 138 of NI Act. The accused Directors viz. *AK* and *VP* filed separate applications under Section 482 CrPC for quashing the prosecution against them. The High Court allowed the application of *VP* and quashed his prosecution in the case but application of *AK* was dismissed. The complainant aggrieved from the order passed in case of *VP* and *AK* aggrieved from the order declining to quash prosecution in his case filed the present appeals.

Allowing the appeal of *AK* while dismissing the appeal of the complainant,

Held :

From a plain reading of Section 141 of the Negotiable Instruments Act, 1881 (NI Act), it is evident that every person who at the time the offence was committed was in charge of and responsible to the company shall be deemed to be guilty of the offence under Section 138 of the NI Act. Therefore, in the case of offence by the company, to bring its Directors within the mischief of Section 138 of the NI Act, it shall be necessary to allege that they were in charge of and responsible to the conduct of the business of the company. It is a necessary ingredient which would be sufficient to proceed against such Directors. However, as no particular form is prescribed, it may not be necessary to reproduce the words of Section 141. If reading of the complaint shows and the substance of accusation discloses necessary averments, that would be sufficient to proceed against such of the Directors and no particular form is necessary. However, it may not be necessary to allege and prove that, in fact, such of the Directors have any specific role in respect of the transaction leading to issuance of cheque. Section 141 of the NI Act makes the Directors in charge of and responsible to company "for the conduct of the business of the Company" within the mischief of Section 138 of the NI Act and not particular business for which the cheque was issued. The Supreme Court cannot read more than what has been mandated in Section 141 of the NI Act. (Para 14)

In Complaint Case No. 331 of 1996 under Section 138 NI Act, the allegation was that all business and financial affairs of the accused Company are decided, organised, administered by Accused 1 to 5 (Chairman, Managing Director, Deputy MD, Whole-time Director and Finance Director). It was further alleged that Accused 1 to 5 do so with consultation of other Directors, namely, Accused 6 to 12. The averments made in the complaint nowhere suggest that the two accused viz. *AK* and *VP* who were Accused 7 and 9 in the complaint, at the time the offence was committed, were in charge of and responsible for the conduct of the business of the Company. According to the complainant Company itself, it was Accused 1 to 5 who were taking decisions and the allegation that in taking the decisions they used to consult accused *AK* and *VP* also will not mean that these two accused were at the time the offence was committed, in charge of and responsible for the conduct of business of the Company. (Para 11.1)

In Complaint Case No. 1293 of 1996 and all other complaints under Section 138 NI Act, a similar allegation was that "all business and financial affairs of the accused Company 1, are decided, organised, administered by Accused 2 to 6 (Chairman, Managing Director, Deputy MD, Whole-time Director and Finance Director) and in consultation of other Directors i.e. from Accused 7 to 13". It was further averred that at the time the offence was committed "they were in charge and responsible to the Company for the conduct of the business" and, therefore, "they are responsible for day-to-day affairs and transaction, business and all financial affairs of the accused Company". From these complaints also, it is difficult to infer that there is any averment that the two accused viz. *AK* and *VP* who were Accused 8 and 10 in the complaints, were in

charge of and responsible for the conduct of the business of the Company at the time the offence was committed. The allegations in the complaints in sum and substance mean that business and financial affairs of the accused Company used to be decided, organised and administered by Accused 2 to 6 and while doing so, other Directors including the two accused herein were consulted. The inference drawn by the complainant on that basis that these two accused viz. *AK* and *VP*, therefore, are in charge and responsible to the Company for the conduct of its business, is absolutely misconceived. The essential averments in the complaints are lacking. (Paras 11.2 and 12)

Therefore, the prosecution of accused *AK* and *VP* cannot be allowed to continue. Accordingly, the order of the High Court quashing the prosecution of the accused *VP* is not fit to be interfered with. For the same reason, the order passed by the High Court declining the prayer of *AK* for quashing of the prosecution cannot be sustained and hence, the prosecution against him in all these cases is quashed. (Paras 18 and 19). *A.K. Singhania* v. *Gujarat State Fertilizer Co. Ltd.*, (2013) 16 SCC 630: (2014) 6 SCC (Cri) 356: (2014) 5 SCC (Civ) 578: AIR 2014 SC 71: (2014) 182 Comp Cas 572: 2014 Cri LJ 340: (2014) 117 Cut LT 385: (2013) 132 AIC 79.

Bench Strength **2**. Coram: **C.K. Prasad** and *Kurian Joseph*, JJ. [Date of decision: 17-10-2013]

S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89: 2005 SCC (Cri) 1975; National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, (2010) 3 SCC 330: (2010) 1 SCC (Civ) 677: (2010) 2 SCC (Cri) 1113, followed

Vikram Prakash v. Gujarat State Fertilizer Co. Ltd., Criminal Misc. Applications Nos. 13393-99 of 2007, order dated 20-1-2012 (Guj), affirmed

A.K. Singhania v. Gujarat State Fertilizer Co. Ltd., Criminal Misc. Application No. 1539 of 2012, order dated 7-2-2012 (Guj), reversed

[457] — Ss. 138 to 140 — Nature of offence under — Held, there is no requirement of proving mens rea. *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength **3**. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[458] — Ss. 138, 139 and 142 — Dishonour of cheque on "stop payment instructions" — Sufficient to prosecute accused — Quashment of proceedings: (i) without invoking presumption under S. 139; (ii) drawing conclusions in absence of any evidence; and (iii) on ground that contents of reply sent by accused not pleaded in complaint — Unsustainability of — *Respondent-accused issued cheque towards business transaction to appellant-complainant — Cheque was dishonoured as respondent-accused had instructed its banker to "stop payment" — Respondent-accused challenged proceedings initiated under S. 138 under S. 482 CrPC — High Court exercising its inherent power, drew certain conclusions on facts and quashed the proceedings holding that "stop payment" instruction did not attract S. 138 NI Act — Untenability of — Held, if cheque is dishonoured relying on "stop payment" instruction, then also penal provision under S. 138 is attracted — Conclusions on facts could have been drawn after evidence was led and High Court erred in drawing conclusions on facts while exercising its inherent power under S. 482 CrPC — Further, contents of notice were not pleaded in complaint was no ground to quash proceedings — Hence, judgment of High Court set aside, and original complaint before trial court restored for trial — CrPC, 1973, S. 482* (Paras 7, 10, 11 and 12). *Pulsive Technologies (P) Ltd.* v. *State of Gujarat*, (2014) 13 SCC 18: (2014) 5 SCC (Cri) 511: (2014) 5 SCC (Civ) 684: (2014) 142 AIC 31: 2015 Cri LJ 283.

Bench Strength **2**. Coram: **Ranjana P. Desai** and *N.V. Ramana*, JJ. [Date of decision: 22-8-2014]

Acer India (P) Ltd. v. State of Gujarat, Criminal Misc. Application No. 1757 of 2007, decided on 8-9-2011 (Guj), reversed

[459] — Ss. 138, 139 and 142 — Dishonour of cheques — Territorial jurisdiction of courts to try offence under S. 138, NI Act — *Reiterated, applying* Dashrath, *(2014) 9 SCC 129, presentation of a cheque for encashment at or issuance of notice from a place of the choice of the complainant or the default notice issued demanding payment from the drawer of the cheque would not by themselves confer jurisdiction upon the courts where cheque is presented for collection — As laid down in* Dashrath, *(2014) 9 SCC 129, offence of cheque dishonour occurs only when cheque is returned unpaid by drawee bank and place of offence is location where cheque is dishonoured — Thus, it is court in whose jurisdiction cheque is returned unpaid by drawee bank that alone would have territorial jurisdiction to entertain a complaint under S. 138, NI Act — CrPC, 1973, S. 177* (Paras 5, 10 and 14). *K.K. Polycolor India Ltd.* v. *Global Trade Finance Ltd.*, (2014) 9 SCC 225: (2014) 5 SCC

(Cri) 16: (2014) 4 SCC (Civ) 790: (2015) 1 Mah LJ 570.

Bench Strength 3. Coram: **T.S. Thakur**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 4-9-2014]

Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129, applied

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[460] — Ss. 138, 140 and 142 — Dishonour of cheque — Complaint by Company — Authorisation to file complaint not produced — Defect of — Effect — Complaint dismissed solely on ground that authorisation of person who signed complaint on behalf of complainant appellant Company was not filed and proved — *Held, procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice — Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use — Further held, an opportunity ought to have been granted to appellant Company to place document containing authorisation on record and prove in accordance with law — Judgments of courts below set aside and matter remitted to trial court with direction to conduct trial afresh taking into consideration authorisation placed on record before Supreme Court — CrPC, 1973, S. 460 — CPC, 1908, Or. 6 R. 14* (Paras 6 and 7). *Haryana State Coop. Supply & Mktg. Federation Ltd.* v. *Jayam Textiles*, (2014) 4 SCC 704: (2014) 2 SCC (Cri) 410: (2014) 2 SCC (Civ) 732: AIR 2014 SC 1926: (2014) 184 Comp Cas 266: 2014 Cri LJ 2477: (2014) 4 CTC 467: (2014) 5 Mah LJ 249: (2014) 3 MPLJ 548: (2014) 138 AIC 73: (2014) 5 LW 21.

Bench Strength 3. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 7-4-2014]

Haryana State Coop. Supply & Mktg. Federation Ltd. v. Jayam Textiles, (2007) 2 MWN (Cri) DCC 69, reversed

[461] — Ss. 138 and 142 — Complaint filed under, without signature of complainant — Maintainability of — Phrase "a complaint in writing" in S. 142(a), construction of — Held, a complaint in writing without signature is maintainable when such complaint is subsequently verified by the complainant and process is issued by the Magistrate after due verification — *Requirements of S. 142(a) are that complaint must necessarily be in writing and it can be presented by*

the payee or holder in due course of the cheque and need not be signed by the complainant — If legislature intended complaint was also required to be signed by the complainant, it would have used different language — In present case, complaint was filed well within time and on the direction of the Magistrate, verification was recorded by solemn affirmation by authorised representatives of the complainant and after recording the statement and securing his signature, Magistrate passed an order issuing summons against the accused under Ss. 138/142 of the NI Act — Hence, prosecution of such complaint is maintainable

Dismissing the appeals,

Held :

The only question for consideration in this matter is whether: the complaint without signature of the complainant under Section 138 of the Act is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after verification. (Para 11)

Hence, the important question in the instant case is what is meant by "complaint in writing" in Section 142(*a*) of NI Act. Whether complaint should be in writing simpliciter or complaint being in writing requires signature below such writing. (Para 14)

The definition of complaint as stated in Section 2(*d*) CrPC provides that it needs to be in writing or oral. The non obstante clause, when it refers to CrPC only excludes the oral part in such definition. The non obstante clause in Section 142(*a*) is restricted to exclude two things only from CrPC i.e. (*a*) exclusion of oral complaints, and (*b*) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course. Non obstante clause, when it refers to the core, restricts the power of the Magistrate to take cognizance only on a complaint by a payee or the holder in due course and excludes the rest of Section 190 CrPC. In other words, none of the other provisions of CrPC are excluded by the said non obstante clause, hence, the Magistrate is therefore required to follow the procedure under Section 200 CrPC once he has taken the complaint of the payee/holder in due course and recorded statement of the complainant and such other witnesses as present at the said date. Here, CrPC specifically provides that the same is required to be signed by the complainant as well as the witnesses making the statement. Mere presentation of the complaint is only the first step and no action can be taken unless the process of verification is complete and, thereafter, the Magistrate has to consider the statement on oath, that is, the verification statement under Section 200 and the statement of any witness, and the Magistrate has to decide whether there is sufficient ground to proceed. It is also relevant to note Section 203 CrPC dealing with dismissal of complaints. It is also clear that a person could be called upon to answer a charge of false complaint/perjury only on such verification statement and not merely on the presentation of the complaint as the same is not on oath and, therefore, need to obtain the signature of the person. Moreover, the legislature has made it clear that wherever it required a written document to be signed, it should be mentioned specifically in the section itself, which is missing both from Section 2(*d*) as well as Section 142. (Paras 12, 18 and 19)

The General Clauses Act, 1897 too draws a distinction between writing and signature and defines them separately. Section 3(56) defines signature and Section 3(65) defines writing. Writing as defined by the General Clauses Act requires that the same is representation or reproduction of "words" in a visible form and does not require signature. "Signature" within the meaning of "writing" would be adding words to the section which the legislature did not contemplate. (Para 20)

In the case on hand, the complaint was presented in person on 3-6-1998 and on the direction by the Magistrate, the complaint was verified on 30-7-1998 and duly signed by the authorised officer of the Company, the complainant. As rightly pointed out by the Division Bench, no prejudice has been caused to the accused for non-signing the complaint. The statement made on oath and signed by the complainant safeguards the interest of the accused. In view of the same, the requirements of Section 142(*a*) of the Act are that the complaint must necessarily be in writing and the complaint can be presented by the payee or holder in due course of the cheque and it need not be signed by the complainant. In other words, if the legislature intended that the complaint under the Act, apart from being in writing, is also required to be signed by the complainant, the legislature would have used different language and inserted the same at the appropriate place. Hence, the correct interpretation would be that the complaint under Section 142(*a*) of the Act requires to be in writing as at the time of taking cognizance, the Magistrate will examine the complainant on oath and the verification statement will be signed by the complainant. Hence, a complaint under Section 138 of the Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after due verification. The prosecution of such complaint is maintainable and

the conclusion arrived at by the Division Bench of the High Court is correct. (Paras 21 and 25). *Indra Kumar Patodia* v. *Reliance Industries Ltd.*, (2012) 13 SCC 1: (2012) 4 SCC (Cri) 209: (2014) 2 SCC (Civ) 103: AIR 2013 SC 426: 2013 Cri LJ 1179: (2013) 1 CTC 230: (2012) 4 KLT 822: (2013) 122 AIC 129: (2013) 1 Cal LJ 23.

Bench Strength **2**. Coram: **P. Sathasivam** and *Ranjan Gogoi*, JJ. [Date of decision: 22-11-2012]

Reliance Industries Ltd. v. State of Maharashtra, (2010) 4 Mah LJ 1: (2010) 4 AIR Bom R 309, affirmed

[462] — S. 138 and S. 357(3) CrPC, 1973 — Offence of dishonour of cheque — Maximum fine that can be imposed — Substitution of punishment of imprisonment with payment of compensation — Grant of compensation to complainant from fine amount — Extent to which permissible — *Appellant was punished with imprisonment of six months and fine of Rs 80,000 under S. 357(3) CrPC as compensation for dishonour of cheque amounting Rs 69,500 — In appeal, High Court modified said order and imposed additional compensation of Rs 69,500 (cheque amount) in lieu of imprisonment — Tenability — Held (*per curiam*), imposing fine more than twice the cheque amount is contrary to S. 138 NI Act — Thus, held, High Court erred in directing payment of additional amount of Rs 69,500 as compensation, albeit in lieu of imprisonment, in addition to fine of Rs 80,000 — Hence, in all, appellant is directed to pay Rs 80,000 to complainant (if not already paid) and sentenced to pay fine of Rs 20,000 in lieu of imprisonment — Held (*per Thakur, J., *concurring), in cheque dishonour cases courts are not empowered to grant compensation under S. 138 NI Act but empowered to levy a maximum fine of not more than double the amount of cheque, even where court is not sending accused to prison — In instant case, High Court imposed compensation which is more than double the cheque amount in violation of provisions of S. 138 NI Act — Since reduction of sentence of imprisonment is not questioned, held, High Court ought to have determined amount of fine to be levied in first instance, and then fixed compensation that was to be paid from fine so levied — CrPC, 1973, S. 357(3) — Penal Code, 1860, S. 63 — CrPC, 1973, Ss. 28 and 29*

Holding that the amount of fine shall not be more than twice the amount of the cheques,

Held :

Per Sen, J.

The appellant faced prosecution for dishonour of a cheque of Rs 69,500 and he was imposed with punishment of imprisonment of six months and Rs 80,000 as compensation by virtue of Section 357(3) CrPC which would be receivable by the complainant. It appears that the High Court modified the punishment of imprisonment of six months by directing payment of further compensation of Rs 69,500 over and above the said sum of Rs 80,000. This would violate Section 138 of the NI Act inasmuch as it would exceed the double of the cheque amount. This leads to conclude that the intention of the High Court was that upon deposit/payment of the further sum of Rs 69,500 (in addition to the earlier sum of Rs 80,000), the sentence of imprisonment for six months would stand withdrawn. Accordingly, it is clarified that the appellant must pay a sum of Rs 80,000 receivable by the complainant within four weeks from today, if not already paid. The appellant is also sentenced to payment of a fine of Rs 20,000, payable within eight weeks from today, and on the failure to make this payment, would be liable for imprisonment for six months. (Paras 5 and 6)

Per Thakur, J. *(concurring)*

There is considerable judicial authority for the proposition that courts can reduce the period of imprisonment depending upon the nature of the transaction, the bona fides of the accused, the contumacy of his conduct, the period for which the prosecution goes on, the amount of the cheque involved, the social strata to which the parties belong, so on and so forth. There is for that purpose considerable discretion vested in the court concerned which can and ought to be exercised in appropriate cases for good and valid reasons. Suffice it to say that the High Court was competent on a plain reading of Section 138 of the NI Act to impose a sentence of fine only upon the appellant. In the absence of a challenge to the order passed by the High Court deleting the sentence of imprisonment awarded to the appellant, it is not necessary or proper to say anything further at this stage. (Para 15)

Regarding the question whether the additional amount which the High Court has directed the appellant to pay could be levied in lieu of the sentence of imprisonment, it is to be understood that the power to levy fine is circumscribed under the statute to twice the cheque amount. Even in a case where the court may be taking a lenient view in favour of the accused by not sending him to prison, it cannot impose a fine more than twice the cheque amount. That statutory limit is inviolable and must be respected. The High Court has, in the case at hand, obviously overlooked the statutory limitation on its power to levy a fine. (Para 16)

Further, the power to award compensation is not available under Section 138 of the Negotiable Instruments Act. It is only when the court has determined the amount of fine that the question of paying compensation out of the same would arise. This implies that the process comprises two stages. First, when the court determines the amount of fine and levies the same subject to the outer limit, if any, as is the position in the instant case. The second stage comprises invocation of the power to award compensation out of the amount so levied. The High Court has taken payment of Rs 80,000 as compensation to be distinct from the amount of fine it is imposing equivalent to the cheque amount of Rs 69,500. Logically, the High Court should have determined the fine amount to be paid by the appellant, which in no case could go beyond twice the cheque amount, and directed payment of compensation to the complainant out of the same. I, therefore, entirely agree with the view that payment of a further sum of Rs 20,000 towards fine, making a total fine of Rs 1,00,000 out of which Rs 80,000 has already been paid as compensation to the complainant, should suffice. (Paras 17 and 18). *Somnath Sarkar* v. *Utpal Basu Mallick*, (2013) 16 SCC 465: (2014) 6 SCC (Cri) 311: (2014) 5 SCC (Civ) 515: AIR 2014 SC 771: 2014 Cri LJ 179: (2013) 4 KLT 350.

Bench Strength 2. Coram: **T.S. Thakur**[2] and **Vikramajit Sen**[1], JJ. [Date of decision: 7-10-2013]

Somnath Sarkar v. Utpal Basu Mallick, Criminal Revision Record No. 2447 of 2004, decided on 1-4-2011 (Cal), modified

[463] — S. 138 & proviso and S. 142 — Dishonour of cheque — Location of litigation — Multiple venues allowed to complainant per view in *K. Bhaskaran*, (1999) 7 SCC 510 — Duty of courts to simplify the law, emphasised — *Held, courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law — Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings — Precision and exactitude are necessary especially where the location of a litigation is concerned*

There are possible incongruities that are fraught in extrapolating decisions relating to civil law onto criminal law, which includes importing the civil law concept of "cause of action" to criminal law. The criminal law essentially envisages that the place where a crime has been committed empowers the court at that place with jurisdiction. The infusion of the concept of "cause of action" into the criminal dispensation in regard to the offence under Section 138 of the NI Act has led to subsequent confusion countenanced in High Courts. *K. Bhaskaran*, (1999) 7 SCC 510 erroneously allows multiple venues to the complainant which runs counter to the Supreme Court's preference for simplifying the law. Courts are enjoined to interpret the law so as to eradicate ambiguity or nebulousness, and to ensure that legal proceedings are not used as a device for harassment, even of an apparent transgressor of the law. Law's endeavour is to bring the culprit to book and to provide succour for the aggrieved party but not to harass the former through vexatious proceedings. Therefore, precision and exactitude are necessary especially where the location of a litigation is concerned. (Para 13). *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength 3. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[464] — S. 138 & proviso and S. 142 — Offence of cheque dishonour — When complete — Cause of action for prosecution for offence — When accrues — Primary and provisory scheme of S. 138 — Effect of the proviso — *S. 138, NI Act in conjunction with S. 177 CrPC, held, leaves no manner of doubt that the return of the cheque unpaid by the drawee bank alone constitutes the commission of the offence of cheque dishonour and indicates the place where the offence is committed — Compliance with the three factors contained in S. 138 proviso, further held, are essential for taking of cognizance of the offence, even though they are not part of the offence of cheque dishonour — Explained, contents of S. 138 proviso place conditions on the operation of the main provision — While S. 138 proviso does not form a constituent of the offence of cheque dishonour itself, it modulates or regulates the offence of cheque dishonour in circumstances where, unless provisions of S. 138 proviso are complied with, the already committed crime remains impervious to prosecution — To this extent* K. Bhaskaran, *(1999) 7 SCC 510 rightly held that the satisfaction of all ingredients of S. 138 and its proviso is essential for the successful initiation or launch of the prosecution — Further explained* (per Thakur, J. supplementing)*, proviso to S. 138 simply postpones the actual prosecution of the offender till such time he fails to pay the amount within the statutory period prescribed for such payment — Parliament in its wisdom considered it just and proper to give to the drawer of a dishonoured cheque an opportunity to pay up the amount before permitting his prosecution, no matter the offence is complete the moment the cheque was dishonoured. Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength **3**. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the

commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[465] — S. 138 & proviso and S. 142 — Territorial jurisdiction of courts relating to offence under S. 138 — "Cause of action" arising on dishonour of cheques in S. 142 — Blindly importing civil law concept of "cause of action" to criminal law — Inadvisability of — Principles pertaining to "cause of action" as perceived in civil law, held, are not routinely relevant in determining territoriality of criminal courts — *There is no provision of NI Act which indicates or enumerates the extraordinary circumstances which would justify a departure from the general rule in criminal law as enshrined in S. 177 CrPC that the place where the offence is committed is where the prosecution has to be conducted — However, since taking of cognizance of the offence under S. 138 is subject to the five* K. Bhaskaran, *(1999) 7 SCC 510 ingredients, satisfaction of all five of which ripens the already committed offence under S. 138 of the NI Act into a prosecutable offence, the employment of the phrase "cause of action" in S. 142 of the NI Act is apposite for taking of cognizance, but inappropriate and irrelevant for determining where the offence is committed — CPC, 1908, S. 20 — CrPC, 1973, Ss. 177 to 179 — Words and Phrases — "Action" and "cause of action". Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129: (2014) 3 SCC (Cri) 673: (2014) 4 SCC (Civ) 676: AIR 2014 SC 3519: (2014) 4 MPLJ 407: 2014 Cri LJ 4350: (2014) 4 CTC 666: (2014) 3 KLT 605: (2014) 212 DLT 737: (2014) 141 AIC 1: (2014) 3 KCCR 2313: (2014) 6 Mah LJ 404: (2014) 3 Guj LR 2700: (2014) 5 ALD 1.

Bench Strength 3. Coram: **T.S. Thakur**[1, 2], **Vikramajit Sen**[1] and *Chockalingam Nagappan*[1], JJ. [Date of decision: 1-8-2014]

[**Ed.**: But the ruling in *Dashrath Rupsingh Rathod* v. *State of Maharashtra*, (2014) 9 SCC 129 has been superseded by the Negotiable Instruments (Amendment) Ordinance, 2015 (No. 6 of 2015) which came into force on 15-6-2015 Sections 3 and 4 of the Ordinance provide;

"*3. Amendment of Section 142.*—In the principal Act, Section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(*a*) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(*b*) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."."

"4. *Validation for transfer of pending cases.*—In the principal Act, after Section 142, the following section shall be inserted, namely:

"142-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of Section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of Section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of Section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of Section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of Section 138 against the same drawer shall be filed before the

same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of Section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."."

The same Amendment was presented as a file in Parliament in May, 2015 but could not become a law, hence the ordinance.]

[466] — S. 138 proviso (a) — Period of limitation — Determination of — Principle that cheque should be presented within six months from date on which it is drawn — Six months' period — Reckoning of — (i) Whether the six months' period means 6 calendar months or exactly 180 days, and (ii) what is the date from which the six months' period must commence and end — *Held, limitation period under S. 138 proviso (a) means six calendar months as per British calendar [as per S. 3(35), General Clauses Act, 1897] and "month" does not mean just a period of 30 days as suggested by the accused, and the said period would commence from the day next when the cheque was drawn and will expire a day prior to the corresponding day of the corresponding month and in case no such day falls in the corresponding month, the said period would expire at the end of the last day of the immediately previous month [as per S. 9, General Clauses, Act, 1897] — Thus, as the cheque in present case was drawn on 31-12-2005, the six months' period would begin from 1-1-2006 and would expire at the end of 30-6-2006 (because 31st day is not there in month of June) — Therefore, as the cheque was presented on 30-6-2006, it would be considered to have been validly presented within 6 months — Therefore, appeal to quash criminal proceedings on said ground of limitation, dismissed — Matter remanded to court of Magistrate and Magistrate directed to conclude it within six months from the date the appellant next appears — Appellant directed to appear before the Magistrate on 3-3-2014 — General Clauses Act, 1897, Ss. 3(35) and 9 — CrPC, 1973, S. 482 — Words and Phrases — "Month", "six months" and "from"*

The meaning of the expression "month", in Section 138, NI Act would not mean only a period of 30 days and, consequently, six months would not mean a period of 180 days. The word "month" has been defined under Section 3(35) of the General Clauses Act, 1897 to mean a month reckoned according to the British calendar. Therefore the words "British calendar" cannot be ignored or eschewed while construing "month" under the NI Act. Accordingly, the period of six months cannot be calculated on 30 days in a month basis. Therefore, modes of calculation based on days as suggested by the accused do not deserve acceptance and are rejected accordingly. (Para 12)

In case of ambiguity with reference to the date of commencement and termination of time, Section 9 of the General Clauses Act, 1897 can be pressed into service. In the present case, the six months' period expired a day prior to the corresponding day of the corresponding month. In the case in hand, no such day falls in the corresponding month and therefore the last day would be last date of the immediately previous month. (Paras 13 and 15)

The view taken in present appeal is different than what has been held in *Sivakumar*, (2009) 13 SCC 623 and therefore, there is no necessity to refer the case to a larger Bench. The use of word "from" in Section 138 proviso (*a*) requires exclusion of the first day on which the cheque was drawn and inclusion of the last day within which such act needs to be done. In other words, six months would expire one day prior to the date in the corresponding month and in case no such day falls, the last day of the immediately previous month. Hence, for all purposes, the date on which the cheque was drawn i.e. 31-12-2005 will be excluded and the period of six months will be reckoned from the next day i.e. from 1-1-2006; meaning thereby that according to the British calendar, the period of six months will expire at the end of 30-6-2006. Since the cheque was presented on 30-6-2006, it was presented within the period prescribed. (Paras 16 and 22)

Viewed from any angle, the prosecution is not time-barred and therefore, cannot be scuttled at this stage on this ground. As the matter is pending since long, the Magistrate in seisin of the trial shall make endeavour to conclude it within six months from the date the appellant next appears in the case. The appellant is directed to appear before the trial Judge on 3-3-2014 and no notice is to be issued to him for his appearance. In the result, there is no merit in the appeal and it is dismissed accordingly. (Paras 23 and 24). *Rameshchandra Ambalal Joshi* v. *State of Gujarat*, (2014) 11 SCC 759: (2014) 3 SCC (Cri) 542: (2014) 4 SCC (Civ) 274: AIR 2014 SC 1554: 2014 Cri LJ 1671: (2014) 2 CTC 205: (2014) 2 KLT 203: (2014) 136 AIC 7: (2014) 3 LW 385.

Bench Strength 2. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 18-2-2014]

Sivakumar v. Natarajan, (2009) 13 SCC 623: (2009) 5 SCC (Civ) 224: (2010) 1 SCC (Cri) 1147, explained and relied on

K.V. Muhammed Kunhi v. P. Janardhanan, 1998 Cri LJ 4330 (Ker), disapproved

Haru Das Gupta v. State of W.B., (1972) 1 SCC 639: 1972 SCC (Cri) 368; Sivakumar v. Natarajan, (2009) 13 SCC 623: (2009) 5 SCC (Civ) 224: (2010) 1 SCC (Cri) 1147; Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329; Econ Antri Ltd. v. Rom Industries Ltd., (2014) 11 SCC 769, applied

Halsbury's Laws of England, Vol. 37, 3rd Edn., Para 143 at p. 83, referred to

Rameshchandra Ambalal Joshi v. State of Gujarat, Special Criminal Application No. 2226 of 2009, order dated 20-8-2010 (Guj), affirmed

[467] — Ss. 138 proviso (b) & 142(b) — Compliance with S. 138 proviso (b) — Re-presentation of cheque after dishonour — Limitation period for filing complaint for dishonour of cheque upon re-presentation of cheque — Date from which to be reckoned — Legal notice to drawer must be issued within 30 days of that dishonour of cheque, which matures into complaint — *Though first legal notice was issued within two days of first dishonour of cheque, second legal notice issued to drawer of cheque on 17-12-2008 pursuant to dishonour of same cheque second time on 10-11-2008 i.e. beyond limitation period of 30 days — Information as to second dishonour was received from Bank on the same day itself (i.e. 10-11-2008) — Held, although the complainant had right to present the said cheque for encashment a second time after its dishonour, the legal notice pursuant to second dishonour had to be issued within 30 days of the receipt of information as to second dishonour from Bank, which was not done — Hence, complaint filed on basis of notice dt. 17-12-2008 was not maintainable in view of non-compliance with all the three conditions laid down in S. 138 NI Act as explained in* MSR Leathers, *(2013) 1 SCC 177 — CrPC, 1973, S. 482*

On dishonour of the cheque in question on 25-10-2008, although a legal notice dated 27-10-2008 was issued to the appellant (i.e. the drawer of the cheque) by making a demand for payment of the amount of the said cheque in terms of Section 138, NI Act, but no complaint was filed under Section 138, NI Act on the basis of that notice. Thereafter, the said cheque was again presented before the Bank on 10-11-2008 for encashment, but it was again dishonoured. Consequently, another legal notice dated 17-12-2008 was issued to the appellant on the basis of the said dishonour of the cheque on 10-11-2008. On no response to the said notice dated 17-12-2008, the instant complaint under Section 138, NI Act was filed against the appellant by Respondent 2 on the basis of the notice dated 17-12-2008. The appellant approached the High Court under Section 482 CrPC for quashing of the said complaint on the ground that it was untenable as it was clearly time-barred and not filed within the stipulated period prescribed in law. The High Court dismissed the petition filed under Section 482 CrPC. Hence, the present appeal.

Allowing the appeal and quashing the complaint,

Held :

The complainant had not filed the complaint on the dishonour of the cheque in the first instance, but presented the said cheque again for encashment. This right of the complainant in presenting the same very cheque for the second time is available to him under Section 138, NI Act. This aspect is already authoritatively determined by the Supreme Court in *MSR Leathers*, (2013) 1 SCC 177. To this extent, there cannot be any quarrel and the act of the complainant in presenting the cheque again cannot be questioned by the appellant. (Para 8)

Further, for the purposes of limitation, insofar as the legal notice is concerned, it is to be served within 30 days of the receipt of information by the drawee from the bank regarding the return of the cheque as unpaid. Therefore, after the cheque is returned unpaid, notice has to be issued within 30 days of the receipt of information in this behalf. That is the period of limitation provided for issuance of legal notice calling upon the drawer of the cheque to make the payment. After the sending of this notice 15 days' time is to be given to the noticee, from the date of receipt of the said notice to make the payment, if that is already not done. If the noticee fails to make the payment, the offence can be said to have been committed and in that event the cause of action for filing the complaint would accrue to the complainant and he is given one month's time from the date of cause of action to file the complaint. (Para 11)

In the present case, the period of limitation is not to be counted from the date when the cheque in question was presented in the first instance on 25-10-2008 or the legal notice was issued on 27-10-2008, inasmuch as the cheque was presented again. The cheque was presented, the second time, on 10-11-2008. The complainant received the information about the dishonour of the cheque on 10-11-2008 itself. However, he did not send the legal notice within 30 days therefrom. Thus, the

complaint filed by him was not maintainable as it was filed without satisfying all the three conditions laid down in Section 138 of the NI Act as explained in para 12 of the judgment in *MSR Leathers*, (2013) 1 SCC 177. (Paras 9, 11, 12 and 15). *Kamlesh Kumar* v. *State of Bihar*, (2014) 2 SCC 424: (2014) 1 SCC (Cri) 839: (2014) 2 SCC (Civ) 83: AIR 2014 SC 660: 2014 Cri LJ 1071: (2014) 1 CTC 329: (2014) 4 Mah LJ 30: (2014) 2 MPLJ 672: (2014) 118 Cut LT 47: (2014) 133 AIC 42: (2014) 2 Cal LT 1.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **Dr A.K. Sikri**, JJ. [Date of decision: 11-12-2013]

MSR Leathers v. S. Palaniappan, (2013) 1 SCC 177: (2013) 1 SCC (Civ) 424: (2013) 2 SCC (Cri) 458, applied

Kamlesh Kumar v. State of Bihar, Criminal Misc. No. 6772 of 2011, order dated 1-11-2012 (Pat), reversed

[468] — S. 138 Expln. — "Debt or other liability" — Meaning of — *Held, means legally enforceable debt or liability — Advance payment for supply of goods not supplied, not covered (**Quaere**: would the result be different if the goods/services for which the advance payment has been made, have been duly supplied?) — Words and Phrases — "Debt or other liability"*

The appellant purchaser placed two purchase orders with the respondent supplier by issuing two separate cheques towards advance payment. After some time, deal between parties got cancelled as goods were not supplied. The respondent supplier tried to supply goods, but it was refused by the appellant purchaser. Complaint under Section 138 was made by the respondent supplier. The trial court issued summons, and it was challenged by the appellant purchaser before the Sessions Court. Issuance of process was quashed. However, the High Court set aside the order passed by the Sessions Court. Hence the present appeal.

Allowing the appeal,

Held :

The Explanation appended to Section 138 of the NI Act explains the meaning of the expression "debt or other liability" for the purpose of Section 138. This expression means a legally enforceable debt or other liability. Section 138 treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. The Explanation leaves no manner of doubt that to attract an offence under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. In other words, drawal of the cheque in discharge of existing or past adjudicated liability is a sine qua non for bringing an offence under Section 138. If a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, the cheque cannot be held to have been drawn for an existing debt or liability. The payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability. (Para 9)

If at the time of entering into a contract, it is one of the conditions of the contract that the appellant purchaser had to pay the amount in advance and there is breach of such condition then the appellant purchaser may have to make good the loss that might have occasioned to the seller but that does not create a criminal liability under Section 138. For a criminal liability to be made out under Section 138, there should be legally enforceable debt or other liability subsisting on the date of drawal of the cheque. (Para 15). *Indus Airways (P) Ltd.* v. *Magnum Aviation (P) Ltd.*, (2014) 12 SCC 539: (2014) 6 SCC (Cri) 845: (2014) 5 SCC (Civ) 138: (2014) 5 LW 340: (2014) 3 CTC 721: (2014) 138 AIC 99: (2014) 5 LW 16: (2014) 2 Cal LJ 134: (2014) 3 Guj LR 2482.

Bench Strength **2**. Coram: **R.M. Lodha** and *Shiva Kirti Singh*, JJ. [Date of decision: 7-4-2014]

Swastik Coaters (P) Ltd. v. Deepak Bros., 1997 Cri LJ 1942 (AP); Shanku Concretes (P) Ltd. v. State of Gujarat, 2000 Cri LJ 1988 (Guj); Balaji Seafoods Exports (India) Ltd. v. Mac Industries Ltd., (1999) 1 CTC 6 (Mad); Supply House v. Ullas, 2006 Cri LJ 4330 (Ker), approved

Magnum Aviation (P) Ltd. v. State, (2010) 172 DLT 91: (2010) 118 DRJ 505, reversed

Mojj Engg. Systems Ltd. v. A.B. Sugars Ltd., (2008) 154 DLT 579, overruled

[**Ed.**: *See* also *Shri Ishar Alloy Steels Ltd.* v. *Jayaswals Neco Ltd.*, (2001) 3 SCC 609: 2001 SCC (Cri) 582; *Sudhir Kumar Bhalla* v. *Jagdish Chand*, (2008) 7 SCC 137: (2008) 3 SCC (Cri) 11; *Kumar Exports* v. *Sharma Carpets*, (2009) 2 SCC 513; *Rangappa* v. *Sri Mohan*, (2010) 11 SCC 441: (2011) 1 SCC (Cri) 184; *Rev Mother Marykutty* v. *Reni C. Kottaram*, (2013) 1 SCC 327; (2013) 1 SCC (Cri) 486.]

— **S. 138(c)** *See* S. 142(b)

— **S. 139** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; Ch. XVII; S. 118; S. 138

— **S. 140** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; Ch. XVII; S. 138

— **S. 141** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; Ch. XVII

— **S. 141** *See* (2013) 16 SCC 630

— **S. 142** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; Ch. XVII; S. 138 & proviso; S. 138

[469] — Ss. 142 and 138 — Averments as to knowledge of complainant required to be made in complaint — *In complaint filed through power-of-attorney holder an explicit assertion as to knowledge of power-of-attorney holder about transaction(s) in question must be specified in complaint — Power-of-attorney holder who has no knowledge regarding transactions cannot be examined as a witness in the case — CrPC, 1973, S. 200 — Evidence Act, 1872, S. 60. A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength 3. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234: 2002 SCC (Cri) 121; Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217, harmonised and affirmed

[470] — Ss. 142 and 138 — Cheques payable to sole proprietary concern — Dishonour of — "Payee" — Who is — Locus standi for filing of complaint — *Complaint signed and filed through power-of-attorney holder on behalf of complainant — Principles reiterated — Clarified however, power-of-attorney holder cannot file a complaint in his own name as if he was the complainant. A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength 3. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

[471] — Ss. 142 and 138 — Complaint — Maintainability — Competence to file — Complaint filed by power-of-attorney holder in the name of payee or holder in due course of the cheque — *Whether payee or holder of the cheque must examine himself in support of complaint petition in view of S. 145 of the NI Act — In light of difference of opinion amongst various High Courts and decisions of Supreme Court on said questions, matter directed to be placed before larger Bench — Constitution of India, Art. 141* (Paras 6 to 8). *A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 809: (2014) 3 SCC (Cri) 569: (2014) 4 SCC (Civ) 362.

Bench Strength 2. Coram: *S.B. Sinha* and *Markandey Katju*, JJ. [Date of decision: 4-1-2007]

[472] — Ss. 142 and 138 — Complaint signed and filed through power-of-attorney holder on behalf of complainant — Sub-delegation of — *Functions under general power of attorney cannot be delegated to another person without a specific clause permitting the same in the general power of attorney — However, general power of attorney itself can be cancelled and be given to another person — CrPC, 1973, S. 200 — Evidence Act, 1872, S. 60. A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength 3. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

[473] — Ss. 142 and 138 — Complaint signed and filed through power-of-attorney holder on behalf of complainant — Validity — Whether the eligibility criteria prescribed by S. 142(a) of the NI Act for taking cognizance, stand satisfied if the complaint petition itself is filed in the name of the payee or the holder in due course of the cheque — Difference of opinion between High Courts and Benches of Supreme Court in *M.M.T.C. Ltd.*, (2002) 1 SCC 234 and *Janki Vashdeo Bhojwani*, (2005) 2 SCC 217 necessitating reference on such question to present larger Bench — *Held, filing of complaint petition under S. 138, NI Act, 1881 through power-of-attorney holder is perfectly legal and competent — However, such power-of-attorney holder or legal representative(s) should have due knowledge about the transaction(s) in question (**see also Shortnotes B, C, D** on power of such power-of-attorney holder to depose as a witness) — Clarified, there is no serious conflict between* M.M.T.C. Ltd. case *and* Janki Vashdeo Bhojwani cases, *and ruling of law herein reconciles view taken in both cases — In* M.M.T.C. Ltd. case, *view taken was that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with S. 142, NI Act and* Janki Vashdeo Bhojwani case *concluded that a complaint by a power-of-attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question — Clarified however, power-of-attorney holder cannot file a complaint in his own name as if he was the complainant — Power-of-attorney holder can only initiate criminal proceedings on behalf of the principal — CrPC, 1973, S. 200 — Evidence Act, 1872, S. 60. A.C. Narayanan* v. *State*

of Maharashtra, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength **3**. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234: 2002 SCC (Cri) 121; Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217, harmonised and affirmed

[474] — Ss. 142 and 138 — Dishonour of cheque — Period of limitation for filing complaint under S. 142(a) — Reckoning of — Held, period of limitation is to be calculated by excluding date on which cause of action arose — *Though Limitation Act, 1963 is not applicable, held, General Clauses Act, 1897 applies to NI Act, 1881 in view of S. 9(2) of 1897 Act — Contention that word "of" occurring in Ss. 138(c) and 142(b) is to be interpreted differently as against the word "from" occurring in S. 138 proviso (a), rejected since the words "of", "from" and "after", in a given case, may mean the same thing — Thus, held,* Saketh India Ltd., *(1999) 3 SCC 1 correctly lays down the law — View in* SIL Import, USA, *(1999) 4 SCC 567 overruled — Reference answered accordingly — General Clauses Act, 1897, S. 9 — Limitation Act, 1963, Ss. 12(1) & (2)*

The issue in the present case was on a reference for reconsideration of the judgment in *Saketh India Ltd.*, (1999) 3 SCC 1 wherein the question of law that arose for consideration was whether for calculating the period of one month which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose?" The issue was referred in view of variance between the view expressed by the Supreme Court in *Saketh India Ltd. case* and in *SIL Import, USA*, (1999) 4 SCC 567.

Upholding the judgment in *Saketh India Ltd. case*, and overruling *SIL Import, USA case*,

Held :

Undoubtedly, the view taken in *SIL Import, USA*, (1999) 4 SCC 567 runs counter to the view taken in *Saketh India Ltd.*, (1999) 3 SCC 1. The reasoning of the Supreme Court in *Saketh India Ltd. case* that in computing time, the rule is to exclude the first day and include the last is based on English decisions and the decision in *Haru Das Gupta*, (1972) 1 SCC 639 which aptly lay down and explain the principle that where a particular time is given from a certain date within which an act has to be done, the day of the date is to be excluded, is affirmed and *SIL Import, USA case* is overruled. (Paras 18 and 26)

The submission that the word "of" occurring in Sections 138(*c*) and 142(*b*) of the NI Act is to be interpreted differently as against the word "from" occurring in Section 38(*a*) of the NI Act, and thus, for the purposes of Section 142(*b*), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days, is rejected. The principle laid down in *Tarun Prasad Chatterjee*, (2000) 8 SCC 649 would have a bearing on the present case since in that case also the Limitation Act was not applicable. Referring to Section 9(1) of the General Clauses Act, 1897, the Supreme Court held that it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the words "from" and, for the purpose of including last in a series of days or any other period of time, to use the word "to". The Supreme Court observed that the said Section 9 gives statutory recognition to the well-established principle applicable to the construction of statute that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day. (Paras 27 to 29)

In *Tarun Prasad Chatterjee*, (2000) 8 SCC 649, it was observed that "in order to apply Section 9 of the GCA, 1897, the first condition to be fulfilled is whether a prescribed period is fixed "from" a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 requires the exclusion of the first day. The words "from" and "within" used in Section 81(1) of the RP Act, 1951 (in question in that case) do not express any contrary intention." Thus, it was concluded that a conjoint reading of Section 81(1) of the RP Act, 1951 and Section 9 of the General Clauses Act, 1897 leads to the conclusion that the first day of the period of limitation is required to be excluded for the convenience of the parties. As the Limitation Act is held to be not applicable to the NI Act, drawing parallel from *Tarun Prasad Chatterjee case* where the Limitation Act was held not applicable, with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. Thus, it is not possible to hold that the word "of" occurring in Sections 138(*c*) and 142(*b*) of the

NI Act is to be interpreted differently as against the word "from" occurring in Section 138(*a*) of the NI Act; and that for the purposes of Section 142(*b*), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. The words "of", "from" and "after" may, in a given case, mean really the same thing. The word "of" is sometimes the equivalent of "after". (Paras 32 to 39)

Thus, it is held that *Saketh India Ltd.*, (1999) 3 SCC 1 lays down the correct proposition of law. For the purpose of calculating the period of one month, which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. Further, *SIL Import, USA*, (1999) 4 SCC 567 does not lay down the correct law. Needless to say that any decision of the Supreme Court which takes a view contrary to the view taken in *Saketh India Ltd. case* by the Supreme Court, which is confirmed now, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly. (Para 42). *Econ Antri Ltd.* v. *Rom Industries Ltd.*, (2014) 11 SCC 769: (2014) 3 SCC (Cri) 551: (2014) 4 SCC (Civ) 284: AIR 2013 SC 3283: 2013 Cri LJ 4195: (2013) 5 CTC 318: (2013) 3 KLT 972: (2013) 130 AIC 242.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjana P. Desai** and *Ranjan Gogoi*, JJ. [Date of decision: 26-8-2013]

Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329; Jindal Steel and Power Ltd. v. Ashoka Alloy Steel Ltd., (2006) 9 SCC 340: (2006) 2 SCC (Cri) 540; Haru Das Gupta v. State of W.B., (1972) 1 SCC 639: 1972 SCC (Cri) 368, affirmed

Goldsmiths' Co. v. West Metropolitan Railway Co., (1904) 1 KB 1: (1900-03) All ER Rep 667 (CA); Cartwright v. MacCormack, (1963) 1 WLR 18: (1963) 1 All ER 11 (CA); Marren v. Dawson Bentley & Co. Ltd., (1961) 2 QB 135: (1961) 2 WLR 679: (1961) 2 All ER 270; North, In re, ex p Hasluck, (1895) 2 QB 264 (CA); Lester v. Garland, (1808) 15 Ves Jun 248: 33 ER 748: 10 RR 68; Radcliffe v. Bartholomew, (1892) 1 QB 161: (1891-94) All ER Rep 829 (DC); Stewart v. Chapman, (1951) 2 KB 792: (1951) 2 All ER 613 (DC); Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138, held, approved

SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600, overruled

Halsbury's laws of England, 2nd Edn., Vol. 32, p. 142; Halsbury's Laws of England, 37th Edn., Vol. 3, p. 92, considered

Danial Latifi v. Union of India, (2001) 7 SCC 740: (2007) 3 SCC (Cri) 266; State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210: (2010) 4 SCC (Civ) 605, distinguished

Stroud's Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), referred to

[475] — Ss. 142 and 138 — Verification under oath of complaint under S. 200 CrPC — Competence of duly constituted power-of-attorney holder filing the complaint — *Held, power-of-attorney holder can depose and verify on oath before the court in order to prove the contents of the complaint only if such power-of-attorney has witnessed the transaction as an agent of the payee/holder in due course or possesses due knowledge regarding the said transaction(s) — CrPC, 1973, S. 200 — Evidence Act, 1872, S. 60. A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength **3**. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234: 2002 SCC (Cri) 121; Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217, harmonised and affirmed

[476] — Ss. 142, 145 and 138 and S. 200 CrPC — Examination of complainant and witnesses under S. 200 CrPC in cheque dishonour cases — Discretion of Magistrate — Sufficiency of affidavit(s) of complainant/his witnesses — Issuance of process based on affidavit of complainant payee/holder in due course or his power-of-attorney holder — Permissibility of — *Power-of-attorney holder who has due knowledge of the transaction(s) in question, held, may be allowed to file complaint under S. 138 NI Act and appear and depose for the purpose of issue of process for offence punishable under S. 138 of NI Act — Further held, it is open to Magistrate to issue process on basis of contents of complaint, documents in support thereof and affidavit submitted by complainant payee/holder in due course or his power-of-attorney holder, in support of complaint — Once complainant payee/holder in due course or his power-of-attorney holder files an affidavit in support of complaint (as permitted under S. 145 of NI Act in cheque dishonour cases) before issuance of process under S. 200 CrPC, it is thereafter open to Magistrate, if he thinks fit, to call upon complainant payee/holder in due course or his power-of-attorney holder to remain present and to examine him as to facts contained in affidavit submitted by complainant in support of his complaint — However, it is a matter of discretion in cheque dishonour cases and Magistrate is not bound to call upon complainant payee/holder in due course or his power-of-attorney holder to remain present*

before the court and to examine him upon oath for taking decision whether or not to issue process on complaint under S. 138 of the NI Act — For the purpose of issuing process under S. 200 CrPC, it is open to Magistrate to rely upon verification in the form of affidavit filed by complainant payee/holder in due course or his power-of-attorney holder in support of complaint under S. 138 of NI Act — It is only if and where Magistrate, after considering complaint under S. 138 of NI Act, documents produced in support thereof and verification in the form of affidavit of complainant payee/holder in due course or his power-of-attorney holder, is of the view that examination of complainant or his witness(s) is required, Magistrate may call upon complainant payee/holder in due course or his power-of-attorney holder to remain present before the court and examine complainant and/or his witness upon oath for taking a decision whether or not to issue process on complaint under S. 138 of NI Act — CrPC, 1973, S. 200 — Evidence Act, 1872, S. 60

Answering the reference in the terms below,

Held :

In terms of Section 142 of the NI Act, no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Though *Janki Vashdeo Bhojwani*, (2005) 2 SCC 217 relates to powers of power-of-attorney holder under CPC but it was concluded therein that a plaint by a power-of-attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. In a way, it is an exception to the well-settled position that the criminal law can be put in motion by anyone and strangers to the transaction in question, namely, legal heir, etc. can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies. Keeping in mind various situations like inability as a result of sickness, old age or death or staying abroad of the payee or holder in due course to appear and depose before the court in order to prove the complaint, it is permissible for the power-of-attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of the payee or holder in due course. However, it is expected that such power-of-attorney holder or legal representative(s) should have knowledge about the transaction(s) in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case a payee or holder in due course, is unable to sign, appear or depose as complainant due to abovequoted reasons. Keeping these aspects in mind, in *M.M.T.C. Ltd.*, (2002) 1 SCC 234, the Supreme Court had taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of the NI Act. Thus it is held that there is no serious conflict between the decisions in *M.M.T.C. Ltd. case* and *Janki Vashdeo Bhojwani case*. (Paras 15, 26 and 33.1)

The stand of the appellant in the criminal appeal is that no complaint can be filed and no cognizance of the complaint can be taken if the complaint is by the power-of-attorney holder, since it is against Section 200 CrPC, and deserves to be rejected. There is no dispute that complaint has to be filed by the complainant as contemplated by Section 200 CrPC, but Section 200 CrPC does not create any embargo that the power-of-attorney holder or legal representative(s) cannot be a complainant. (Para 27)

The power-of-attorney holder is the agent of the grantor. When the grantor authorises the power-of-attorney holder to initiate legal proceedings and the power-of-attorney holder accordingly initiates such legal proceedings, he does so as the agent of the grantor and the initiation is by the grantor represented by his attorney holder and not by the attorney holder in his personal capacity. Therefore, for example, where the payee is a proprietary concern, the complaint can be filed by the proprietor of the proprietary concern, describing himself as the sole proprietor of the payee; or the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; or the proprietor or the proprietary concern represented by the attorney holder under a power-of-attorney executed by the sole proprietor. However, it is clarified that the power-of-attorney holder cannot file a complaint in his own name as if he was the complainant. In other words, he can only initiate criminal proceedings on behalf of the principal. (Paras 28 and 31)

From a conjoint reading of Sections 138, 142 and 145 of the NI Act as well as Section 200 CrPC, it is clear that it is open to the Magistrate to issue process on the basis of the contents of the complaint, documents in support thereof and the affidavit submitted by the complainant payee/holder in due course or his power-of-attorney holder in support of the complaint. Once the complainant payee/holder in due course or his power-of-attorney holder files an affidavit in support of the complaint (as permitted under Section 145 of the NI Act in cheque dishonour cases) before issuance of the process under Section 200 CrPC, it

is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant payee/holder in due course or his power-of-attorney holder to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion in cheque dishonour cases and the Magistrate is not bound to call upon the complainant payee/holder in due course or his power-of-attorney holder to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint under Section 138 of the NI Act. For the purpose of issuing process under Section 200 CrPC in cheque dishonour cases, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant payee/holder in due course or his power-of-attorney holder in support of the complaint under Section 138 of the NI Act. It is only if and where the Magistrate, after considering the complaint under Section 138 of the NI Act, documents produced in support thereof and the verification in the form of affidavit of the complainant payee/holder in due course or his power-of-attorney holder, is of the view that examination of the complainant or his witness(s) is required, the Magistrate may call upon the complainant payee/holder in due course or his power-of-attorney holder to remain present before the court and examine the complainant and/or his witness upon oath for taking a decision whether or not to issue process on the complaint under Section 138 of the NI Act. (Paras 29 and 33.4)

Thus the power-of-attorney holder may be allowed to file the complaint, appear and depose and verify on oath before the court in order to prove the contents of the complaint for the purpose of issue of process for the offence punishable under Section 138 of the NI Act. However, when the power-of-attorney holder of the complainant has not witnessed or does not have a personal knowledge about the transactions, then he cannot be examined as a witness in the case. However, where the attorney holder of the complainant is in charge of the business of the complainant payee and the attorney holder alone is personally aware of the transactions, there is no reason why the attorney holder cannot depose as a witness. Nevertheless, an explicit assertion as to the knowledge of the power-of-attorney holder about the transaction in question must be specified in the complaint. (Paras 30, 33.2 and 33.3)

The attorney holder can sign and file a complaint on behalf of the complainant payee. However, whether the power-of-attorney holder will have the power to further delegate the functions to another person will completely depend on the terms of the general power-of-attorney. As a result, the authority to sub-delegate the functions must be explicitly mentioned in the general power-of-attorney. Otherwise, the sub-delegation will be inconsistent with the general power-of-attorney and thereby will be invalid in law. Nevertheless, the general power-of-attorney itself can be cancelled and be given to another person. (Paras 32 and 33.5). *A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength 3. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

M.M.T.C. Ltd. v. Medchl Chemicals and Pharma (P) Ltd., (2002) 1 SCC 234: 2002 SCC (Cri) 121; Janki Vashdeo Bhojwani v. IndusInd Bank Ltd., (2005) 2 SCC 217, harmonised and affirmed

[477] — S. 142(a) — "Complaint in writing" under — Whether in writing simpliciter or requiring signature below such writing — Scope and impact of non obstante clause in S. 142, examined for determination of — *Reading together with definition of "complaint" in S. 2(d) CrPC, held, non obstante clause restricted to exclude only two things from CrPC i.e.: (a) exclusion of oral complaints referred to under S. 2(d), and (b) exclusion of cognizance on complaint by anybody other than payee or the holder in due course, referred to in S. 190 — No other provisions of CrPC are excluded by the non obstante clause — Hence, Magistrate is required to follow procedure under S. 200 CrPC once he has taken complaint of payee/holder and recorded statement of complainant and of witnesses — Here CrPC specifically provides verification statement is required to be signed by complainant and the witnesses — Further, legislative intent that "writing" does not presuppose it has to be signed is clear from various sections in CrPC — "Signature" within the meaning of "writing" would be adding words to the section which the legislature did not contemplate — Words and Phrases — "Writing" and "Signature" — General Clauses Act, 1897, Ss. 3(56) and (65) — CrPC, 1973, Ss. 61, 70, 154, 164 and 281*

Dismissing the appeals,

Held :

The only question for consideration in this matter is whether: the complaint without signature of the complainant under Section 138 of the Act is

maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after verification. (Para 11)

Hence, the important question in the instant case is what is meant by "complaint in writing" in Section 142(*a*) of NI Act. Whether complaint should be in writing simpliciter or complaint being in writing requires signature below such writing. (Para 14)

The definition of complaint as stated in Section 2(*d*) CrPC provides that it needs to be in writing or oral. The non obstante clause, when it refers to CrPC only excludes the oral part in such definition. The non obstante clause in Section 142(*a*) is restricted to exclude two things only from CrPC i.e. (*a*) exclusion of oral complaints, and (*b*) exclusion of cognizance on complaint by anybody other than the payee or the holder in due course. Non obstante clause, when it refers to the core, restricts the power of the Magistrate to take cognizance only on a complaint by a payee or the holder in due course and excludes the rest of Section 190 CrPC. In other words, none of the other provisions of CrPC are excluded by the said non obstante clause, hence, the Magistrate is therefore required to follow the procedure under Section 200 CrPC once he has taken the complaint of the payee/holder in due course and recorded statement of the complainant and such other witnesses as present at the said date. Here, CrPC specifically provides that the same is required to be signed by the complainant as well as the witnesses making the statement. Mere presentation of the complaint is only the first step and no action can be taken unless the process of verification is complete and, thereafter, the Magistrate has to consider the statement on oath, that is, the verification statement under Section 200 and the statement of any witness, and the Magistrate has to decide whether there is sufficient ground to proceed. It is also relevant to note Section 203 CrPC dealing with dismissal of complaints. It is also clear that a person could be called upon to answer a charge of false complaint/perjury only on such verification statement and not merely on the presentation of the complaint as the same is not on oath and, therefore, need to obtain the signature of the person. Moreover, the legislature has made it clear that wherever it required a written document to be signed, it should be mentioned specifically in the section itself, which is missing both from Section 2(*d*) as well as Section 142. (Paras 12, 18 and 19)

The General Clauses Act, 1897 too draws a distinction between writing and signature and defines them separately. Section 3(56) defines signature and Section 3(65) defines writing. Writing as defined by the General Clauses Act requires that the same is representation or reproduction of "words" in a visible form and does not require signature. "Signature" within the meaning of "writing" would be adding words to the section which the legislature did not contemplate. (Para 20)

In the case on hand, the complaint was presented in person on 3-6-1998 and on the direction by the Magistrate, the complaint was verified on 30-7-1998 and duly signed by the authorised officer of the Company, the complainant. As rightly pointed out by the Division Bench, no prejudice has been caused to the accused for non-signing the complaint. The statement made on oath and signed by the complainant safeguards the interest of the accused. In view of the same, the requirements of Section 142(*a*) of the Act are that the complaint must necessarily be in writing and the complaint can be presented by the payee or holder in due course of the cheque and it need not be signed by the complainant. In other words, if the legislature intended that the complaint under the Act, apart from being in writing, is also required to be signed by the complainant, the legislature would have used different language and inserted the same at the appropriate place. Hence, the correct interpretation would be that the complaint under Section 142(*a*) of the Act requires to be in writing as at the time of taking cognizance, the Magistrate will examine the complainant on oath and the verification statement will be signed by the complainant. Hence, a complaint under Section 138 of the Act without signature is maintainable when such complaint is verified by the complainant and the process is issued by the Magistrate after due verification. The prosecution of such complaint is maintainable and the conclusion arrived at by the Division Bench of the High Court is correct. (Paras 21 and 25). *Indra Kumar Patodia* v. *Reliance Industries Ltd.*, (2012) 13 SCC 1: (2012) 4 SCC (Cri) 209: (2014) 2 SCC (Civ) 103: AIR 2013 SC 426: 2013 Cri LJ 1179: (2013) 1 CTC 230: (2012) 4 KLT 822: (2013) 122 AIC 129: (2013) 1 Cal LJ 23.

Bench Strength **2**. Coram: **P. Sathasivam** and *Ranjan Gogoi*, JJ. [Date of decision: 22-11-2012]

Reliance Industries Ltd. v. State of Maharashtra, (2010) 4 Mah LJ 1: (2010) 4 AIR Bom R 309, affirmed

— S. 142(b) *See also* S. 138 proviso (b)

[478] — Ss. 142(b) and 138(c) — Period of limitation prescribed for filing complaint under — Date relevant for — Complaint filed without signature subsequently verified by complainant — *Date for computation of period of limitation, held, is date of filing of complaint or initiating criminal proceedings and not date of taking cognizance by*

Magistrate (Para 24). *Indra Kumar Patodia* v. *Reliance Industries Ltd.*, (2012) 13 SCC 1: (2012) 4 SCC (Cri) 209: (2014) 2 SCC (Civ) 103: AIR 2013 SC 426: 2013 Cri LJ 1179: (2013) 1 CTC 230: (2012) 4 KLT 822: (2013) 122 AIC 129: (2013) 1 Cal LJ 23.

Bench Strength 2. Coram: **P. Sathasivam** and *Ranjan Gogoi*, JJ. [Date of decision: 22-11-2012]

— **S. 143** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]

[479] — Ss. 143 to 147 and 138 — Cheque dishonour cases — Directions issued for expeditious disposal of — Objectives of Amendment Act, 2002 — Fulfilment of — *In order to have uniform practice in dealing with cases of dishonour of cheques, and to achieve objectives of speedy summary trial in view of amended provisions of NI Act viz. Ss. 143 to 147, held, amended provisions must be given effect to in letter and spirit — Held, court has option of accepting affidavits of complainant and other witnesses instead of examining them in the court, for their examination-in-chief — However, witnesses to the complaint and the accused must be available for cross- examination as and when there is direction to this effect by the court — Constitution of India, Arts. 21, 32 and 142 — CrPC, 1973, Ss. 262 to 264 and 202 to 204* (Paras 11 to 23)

Allowing the petition,

Held :

Considerable time is usually spent on recording the statement of the complainant. The court can dispense with the appearance of the complainant instead, to take steps to accept the affidavit of the complainant and treat the same as examination-in-chief. Section 145(1) of the NI Act gives complete freedom to the complainant either to give his evidence by way of affidavit or by way of oral evidence. The court has to accept the same even if it is given by way of an affidavit. The second part of Section 145(1) of the NI Act provides that the complainant's statement on affidavit may, subject to all just exceptions, be read in evidence in any inquiry, trial or other proceedings. Section 145 of the NI Act is a rule of procedure which lays down the manner in which the evidence of the complainant may be recorded and once the court issues summons and the presence of the accused is secured, an option be given to the accused whether, at that stage, he would be willing to pay the amount due along with reasonable interest and if the accused is not willing to pay, the court may fix up the case at an early date and ensure day-to-day trial. (Para 16)

Under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the court, which makes it clear that a complainant is not required to examine himself twice i.e. once after filing the complaint and once after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage. In other words, there is no necessity to recall and re-examine the complainant after summoning of the accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the NI Act suo motu by the court. In a summary trial, after the accused is summoned, his plea is to be recorded under Section 263(*g*) CrPC and his examination, if any, can be done by a Magistrate and a finding can be given by the court under Section 263(*h*) CrPC and the same procedure can be followed by a Magistrate for the offence of dishonour of cheque since offence under Section 138 of the NI Act is a document based offence. If provisos (*a*), (*b*) and (*c*) to Section 138 of the NI Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences. (Para 18)

The Amendment Act, 2002 has to be given effect to in its letter and spirit. Hence, the following directions are issued:

(*1*) The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the NI Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

(*2*) The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

(*3*) The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if

such an application is made, the court may pass appropriate orders at the earliest.

(*4*) The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of the NI Act for recalling a witness for cross-examination.

(*5*) The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court. (Para 23). *Indian Bank Assn.* v. *Union of India*, (2014) 5 SCC 590: (2014) 2 SCC (Cri) 652: (2014) 3 SCC (Civ) 233: AIR 2014 SC 2528: (2014) 184 Comp Cas 377: 2014 Cri LJ 3119: (2014) 6 Mah LJ 10: (2014) 2 KLT 788: (2014) 4 LW 577: (2014) 4 MPLJ 278.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 21-4-2014]

KSL and Industries Ltd. v. Mannalal Khandelwal, 2005 Cri LJ 1201 (Bom); Indo International Ltd. v. State of Maharashtra, 2006 Cri LJ 208: (2005) 44 Civil CC (Bom); Harischandra Biyani v. Stock Holding Corpn. of India Ltd., (2006) 4 Mah LJ 381; Magma Leasing Ltd. v. State of W.B., (2007) 3 CHN 574; Rajesh Agarwal v. State, ILR (2010) 6 Del 610, affirmed

— **S. 144** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; S. 143

— **S. 145** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; S. 142; S. 143

— **S. 146** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; S. 143

— **S. 147** *See* Ch. XVII [as introduced by Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988]; S. 143

[480] — Ss. 147 and 138 — Compounding of offence under S. 138 — Dishonor of cheque — Appellant issued cheque for Rs 1,30,000 in favour of respondent, and which was dishonored — *Trial court convicted and sentenced appellant to pay a fine of Rs 2 lakhs, out of which Rs 1,90,000 was to be paid to respondent complainant — Revisional Court and High Court affirmed conviction and sentence — Complainant had no objection in setting aside of conviction if out of the amount of Rs 2 lakhs deposited by appellant Rs 1,90,000 was given to him — Amount of Rs 1 lakh deposited in trial court and out of Rs 1 lakh deposited by appellant in the Registry of Supreme Court, Rs 90,000, with interest accrued thereon to be paid to complainant and Rs 10,000 be appropriated by State — Conviction of appellant set aside — CrPC, 1973, S. 320. B.V. Vidhyashankar* v. *B. Mahaveer Kumar*, (2011) 15 SCC 447: (2014) 2 SCC (Civ) 615: AIR 2012 SC Supp 783.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 28-3-2011]

B.V. Vidyashankar v. B. Mahaveer Kumar, Criminal Revision Petition No. 1 of 2008, order dated 16-6-2008 (KAR), modified

6. NON-SCHEDULED BANKS/NBFCS/CHIT FUNDS/SAVING SCHEMES/FINANCIAL LEASING/HIRE-PURCHASE

(a) Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (17 of 1999)

[481] — Ss. 2(c), 3, 5 to 9 — "Financial establishment" under S. 2(c) — *Held, S. 2(c) does not exclude cooperative banks from penal action and attachment of property provisions — It only excludes company registered under the Companies Act or a corporation or a cooperative society owned and controlled by any State Government or the Central Government — Therefore, writ petition seeking mandamus directing respondents not to arrest them or attach properties of directors of alleged cooperative banks were dismissed* (Para 17). *Soma Suresh Kumar* v. *Govt. of A.P.*, (2013) 10 SCC 677: (2014) 1 SCC (Cri) 378: (2014) 1 SCC (Civ) 90: AIR 2013 SC Supp 816: (2013) 180 Comp Cas 277.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 12-9-2013]

— **Ss. 2(c), 3, 5 to 9 — Validity upheld** *See* 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase' — Fraudulent/Fictitious Financial Establishments/Deposit Schemes, Ss. 3, 5, 8 and 9 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Andhra Act), (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

See also STATUTE LAW — 'Pari Materia Provisions' (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

[482] — Ss. 3, 5, 8 and 9 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Andhra Act) — Legislative competence of State Legislature in respect of, affirmed — *Supreme Court validating Legislative competence of State Legislature in respect of pari materia legislation in other States in earlier cases — Considering objectives of Andhra Act, need of a such a comprehensive law in the interest of depositors and that the Andhra Act*

received the assent of President under Art. 245(2) of the Constitution even if same was not repugnant to any Central Law, Andhra Act, held, is constitutionally valid — Therefore, proceedings initiated against the Directors of alleged fraudulent cooperative bank under Andhra Act and other laws not disturbed or interfered with — Writ petitions by Directors of said cooperative bank were dismissed — Constitution of India, Arts. 246 and 254(2), Sch. VII List I Entries 43 to 45, List II Entries 1, 30 and 32 and List III Entries 1, 8, 13 and 21 and Arts. 141, 32, 14 and 21 — Penal Code, 1860, Ss. 120-B, 420, 409, 468 and 477(A) — Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (17 of 1999), Ss. 2(c), 3, 5 to 9 — Securities and Exchange Board of India Act, 1992, Ss. 11 to 11-D of Ch. IV — Applicability (Paras 8 to 18)

The present writ petitions under Article 32 of the Constitution challenged the law made by the State Legislature to protect depositors against fraudulent financial establishments on the ground the State Legislature did not have legislative competence to enact such laws as the term "banking" comes under Schedule VII, List I Entry 45.

But, the petitioners (Directors of the alleged fraudulent banking cooperative society) were not merely prosecuted under Sections 3, 5, 8 and 9 of the Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 which they challenged. They were also charge-sheeted under Sections 120-B, 420, 409, 468, 477-A, IPC. Further, the Union of India submitted that over and above, the above provisions, Sections 11 to 11-D of Chapter IV of the Securities and Exchange Board of India Act, 1992 (15 of 1992) would also be applicable as amended by Amendment Act 2002 (59 of 2002).

The relief which the petitioners sought was quashment of the criminal proceedings and a mandamus directing the respondents not to arrest them or attach their properties.

Dismissing the writ petitions, the Supreme Court held as above. *Soma Suresh Kumar* v. *Govt. of A.P.*, (2013) 10 SCC 677: (2014) 1 SCC (Cri) 378: (2014) 1 SCC (Civ) 90: AIR 2013 SC Supp 816: (2013) 180 Comp Cas 277.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 12-9-2013]

New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry, (2012) 10 SCC 575: (2013) 1 SCC (Civ) 516: (2013) 1 SCC (Cri) 1061; K.K. Baskaran v. State, (2011) 3 SCC 793: (2011) 2 SCC (Civ) 90, applied

[483] — Ss. 2(c), 3, 5 to 9 and SOR — Objectives of Andhra Act, stated — It is a comprehensive legislation to protect depositors and check unfair practices by fraudulent financial establishments (Paras 8 to 10). *Soma Suresh Kumar* v. *Govt. of A.P.*, (2013) 10 SCC 677: (2014) 1 SCC (Cri) 378: (2014) 1 SCC (Civ) 90: AIR 2013 SC Supp 816: (2013) 180 Comp Cas 277.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 12-9-2013]

(b) Cooperative Banks

— **Generally** *See* 'Banks' — Banking Regulation Act, 1949, S. 5(b), (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

See also 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase' — Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (17 of 1999), Ss. 2(c), 3, 5 to 9, (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

(c) Fraudulent/Fictitious Financial Establishments/Deposit Schemes

[484] — Fictitious deposit scheme — Refund to genuine depositors/investors as per judgment dt. 31-8-2012 in *Sahara India Real Estate Corpn. Ltd.*, (2013) 1 SCC 1 — Contempt proceedings for non-compliance with refund directions — Directions relating to connected proceedings in High Court — *All such pending proceedings in High Court stayed till disposal of present contempt petitions by Supreme Court — Constitution of India, Arts. 129, 142 and 141* (Paras 1 to 5). *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and *J.S. Khehar*, JJ. [Date of decision: 26-3-2014]

[485] — Fictitious deposit scheme — Refund to genuine depositors/investors as per judgment dt. 31-8-2012 in *Sahara India Real Estate Corpn. Ltd.*, (2013) 1 SCC 1 — Contempt proceedings for non-compliance with refund directions — *Disbursement of part of refunded money to: (a) genuine investors, and (b) genuine multiple investors — With regard to genuine investors, SEBI permitted to make refund with interest after verifying genuineness of documents — With regard to genuine multiple investors, judicial examination kept pending till next hearing* (Paras 7 to 11). *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and *J.S. Khehar*, JJ. [Date of decision: 26-3-2014]

6.(c) Fraudulent/Fictitious Financial Establishments/Deposit Schemes (*contd.*)

[486]— Redemption — Cash redemptions — Proof — Sole reliance on general ledger entries without any other authentication — *Chartered Accountant only authenticating cheque payment entries in ledger and not the cash payment entries — Held, insufficient proof of cash refunds/redemption* (Paras 143 to 155 and 185.9). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

[487]— Repayment/refund orders by statutory authority — Compliance with — Manner — Refunds have to be made only as directed by said authority — *Refunds made in manner other than prescribed would be in violation of order of authority and per se illegal and invite contempt proceedings if the same also amount to violation of court orders prescribing a particular manner of repayment or endorsing mode of repayment prescribed by authority concerned, as in present case — Securities and Exchange Board of India Act, 1992, Ss. 11, 11-A and 11-B* (Paras 38, 140 and 143). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— State legislation to protect interest of depositors, upheld *See* 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase' — Fraudulent/Fictitious Financial Establishments/ Deposit Schemes, Ss. 3, 5, 8 and 9 of Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (Andhra Act), (2013) 10 SCC 677: (2014) 1 SCC (Civ) 90

DEBT OWED TO STATE/CROWN DEBT/TAX ARREARS

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

DEBT/DEBTOR/LOAN

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

DEBTS RECOVERY TRIBUNAL

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

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DEEDS AND DOCUMENTS

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1. CONSTRUCTION/INTERPRETATION OF DEEDS AND DOCUMENTS

(a) Generally

[488]— Governing principles as to — Court to interpret a document only if it is ambiguous or its meaning is uncertain — Primary rule as to interpretation of a document is to ascertain the intention of executants of document — *Said intention must be gathered from what has been said/written in the document and not what may be supposed to have been intended — Words used in document must be understood in their normal and natural meaning with reference to the language*

employed therein — In absence of any ambiguity in language employed, contemporary events and circumstances surrounding execution of document have no relevance — Further, subsequent events or conduct of parties after execution of document must not be taken into consideration, particularly where there is no ambiguity in language of document — Transfer of Property Act, 1882, S. 122 — Succession Act, 1925, Ss. 87, 74, 82 to 86, 77, 80 and 81 (Paras 19, 25, 26 and 30). *Mathai Samuel* v. *Eapen Eapen*, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116: AIR 2013 SC 532: (2012) 4 KLT 743: (2013) 96 ALR 216: (2013) 121 AIC 254: (2013) 1 LW 330.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 21-11-2012]

A. Sreenivasa Pai v. Saraswathi Ammal, (1985) 4 SCC 85; Rajendra Prasad Bose v. Gopal Prasad Sen, (1929-30) 57 IA 296: AIR 1930 PC 242; C. Cheriathan v. P. Narayanan Embranthiri, (2009) 2 SCC 673: (2009) 1 SCC (Civ) 692, followed

Stone, In re, Baker v. Stone, (1895) 2 Ch 196 (CA), approved

Halsbury's Laws of England, 4th Edn., Vol. 50, p. 239; Theobald on Wills (17th Edn., 2010); Underhill and Strahan: The Principles of the Interpretation of Wills and Settlements (1900 Edn.), referred to

(b) Basic rules

(1) Golden rule: Plain or ordinary meaning

See 'Construction/Interpretation of Deeds and Documents' — Generally, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

(2) Holistic construction/Contextual meaning/Surrounding circumstances

See 'Construction/Interpretation of Deeds and Documents' — Construction of Words and Phrases, (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

(3) Intention of the parties

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45, 44, 5, 7, 10, 11 and 8 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

See also INSURANCE — 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

(4) Literal or strict construction

See INSURANCE — 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

(c) Construction of Words and Phrases

Contextual meaning

[489]— Textual interpretation matching the context — *Where expression is not defined either in agreement executed between parties or in statutes concerned, said expression shall be given its ordinary literal meaning having regard to context in which the same is used — A textual interpretation that matches the context is the best. Anand Bros. (P) Ltd.* v. *Union of India*, (2014) 9 SCC 212: (2014) 2 SCC (L&S) 761: (2014) 5 SCC (Cri) 5: (2014) 4 SCC (Civ) 777: AIR 2015 SC 125: (2014) 107 ALR 903: (2014) 143 AIC 229.

Bench Strength **3**. Coram: **T.S. Thakur**, *Chockalingam Nagappan* and *A.K. Goel*, JJ. [Date of decision: 4-9-2014]

Raipur Development Authority v. Chokhamal Contractors, (1989) 2 SCC 721, harmonised

RBI v. Peerless General Finance and Investment Co. Ltd., (1987) 1 SCC 424; Gora Lal v. Union of India, (2003) 12 SCC 459; Anand Bros. (P) Ltd. v. Union of India, CS (OS) No. 1574 of 1999, order dated 27-2-2002 (Del); Anand Bros. (P) Ltd. v. Union of India, FAO (OS) No. 144 of 2002, order dated 4-8-2008 (Del), affirmed

Black's Law Dictionary, relied on

Daffadar Bhagat Singh and Sons v. ITO, AIR 1969 SC 340; Rajinder Nath v. CIT, (1979) 4 SCC 282, impliedly affirmed

Build India Construction System v. Union of India, (2002) 5 SCC 433, distinguished on facts

(d) External/Extrinsic aids

— Correspondence/Letters/Circulars *See* GOVERNMENT CONTRACTS/TENDERS — 'Interpretation of contractual terms', (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455

(e) Particular deeds, documents and clauses

(1) Arbitration agreement

See 'Construction/Interpretation of Deeds and Documents' — Construction of Words and Phrases, (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

See also ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45, 44, 5, 7, 10, 11 and 8 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

(2) Commercial documents

See CONTRACT AND SPECIFIC RELIEF — 'Construction/Interpretation of contract', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

(3) Contracts/Agreements/Government contracts

See also GOVERNMENT CONTRACTS/TENDERS — 'Interpretation of contractual terms', (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455

— Insurance Contracts/Insurance policy *See* CONTRACT AND SPECIFIC RELIEF — 'Construction/Interpretation of contract', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

See also INSURANCE — 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

(f) Subsidiary rules

(1) Casus omissus

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45, 44, 5, 7, 10, 11 and 8 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

(2) Conjunctive or disjunctive

— Use of "and/or" *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 147, (2014) 9 SCC 341: (2014) 5 SCC (Civ) 48

(3) Rule of Contra Proferentem

See CONTRACT AND SPECIFIC RELIEF — 'Construction/Interpretation of contract', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

(4) Substance over form

[490]— Nature of document concerned — Determination of — Nomenclature given by parties to transaction concerned is not decisive in respect thereof — What matters is the substance of the document (Para 16). *Mathai Samuel* v. *Eapen Eapen*, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116: AIR 2013 SC 532: (2012) 4 KLT 743: (2013) 96 ALR 216: (2013) 121 AIC 254: (2013) 1 LW 330.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 21-11-2012]

2. PARTICULAR DEEDS, DOCUMENTS AND CLAUSES

(a) Contracts/Agreements/Government Contracts

— Insurance Contracts/Insurance policy — Use of "and/or" *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 147, (2014) 9 SCC 341: (2014) 5 SCC (Civ) 48

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(1) Generally

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(2) Gift deed

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— Distinguished from "will" — Tests to determine whether a document constitutes a "gift" or a "will" *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

(3) Will

— Composite document having characteristics of both "will" and "gift" — Mode of giving effect to — Need of such document to be necessarily registered — Absence of said registration — Effect of *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— Distinguished from gift — Tests to determine whether a document constitutes a "gift" or a "will" *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

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DEFICIENCY IN SERVICE

See HOUSING, CONSTRUCTION AND REAL ESTATE

DELAY IN DELIVERY OF POSSESSION

See HOUSING, CONSTRUCTION AND REAL ESTATE

DELAY INCURRED IN PROCEEDINGS/ TIME-BOUND EXPEDITIOUS DISPOSAL

See CONSTITUTION OF INDIA — 'Article 136' — Exercise of power under by Supreme Court — Relief

DELAY/LACHES/LIMITATION

See CIVIL SUIT

See also CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition

See also LAND ACQUISITION AND REQUISITION

See also PRACTICE AND PROCEDURE

DELAY/SPEEDY DISPOSAL

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

DELAYED PAYMENTS (INTEREST ON) TO SMALL SCALE AND ANCILLARY INDUSTRIAL UNDERTAKINGS ACT, 1993

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

DELAYED PAYMENTS/WITHHELD AMOUNT/ WRONGFULLY DETAINED AMOUNT

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

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See ADMINISTRATIVE LAW

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DELHI RENT CONTROL ACT, 1958 (59 OF 1958)

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2. ALLEGANS SUAM TURPITUDINEM NON EST AUDIENDUS

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16. NEMO DEBET BIS VEXARI PRO UNA ET EADEM CAUSA (NO MAN SHOULD BE VEXED TWICE OVER FOR THE SAME CAUSE)

See CIVIL PROCEDURE CODE, 1908, S. 11, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

17. NOSCITUR A SOCIIS

— Contextual principle *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Presidency Small Cause Courts Act, 1882, S. 41(1) (as amended by Maharashtra Act 19 of 1976), (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

18. PUBLIC POLICY

[491]— No assistance by court when cause of action based on illegal act — Public policy distinct from policy of law or policy of statute — *Doctrines and Maxims — Ex turpi causa non oritur actio — Doctrines and Maxims — Ex dolo malo non oritur actio*

The principle of public policy is: *ex dolo malo non oritur actio*. No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own stating or otherwise, the cause of action appears to arise *ex turpi causa*, or the transgression of a positive law of country, there the court says he has no right to be assisted. Public policy, though based on morality and its notions are inherently subjective, has apparently been referred to as synonymous with the policy of law or the policy of the statute. However, in modern times it has become quite distinct from that of policy of law as it has rightly been said that a just thing may not be legally right as morality and law are not co-extensive. (Para 30). *CBI* v. *Ashok Kumar Aggarwal*, (2013) 15 SCC 222: (2014) 3 SCC (Cri) 634: (2014) 5 SCC (Civ) 225: (2014) 133 AIC 215.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-11-2013]

19. RATIO DECIDENDI

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20. RES JUDICATA/RES JUDICATA PRO VERITATE ACCIPITUR

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[492]— Doctors/Hospitals — Professional competence — Effective medical services — Medical fraternity to educate and update themselves as to any new medicinal discipline and rare diseases. *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, followed

(b) Doctor and Patient

See also CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Health and Health care, Right to, Arts. 21 and 14, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

[493]— Conduct of doctor — Denial of patient as one's patient — *Complaint against Dr **P** with regard to certain omissions on his part in medical treatment of patient **L** — Medical records indicated Dr **P** as patient's operating surgeon — Other evidence also led to creation of contractual agreement between **L** and Dr **P** — Dr **P** in defence denying **L** as his patient, held, not proper — Hence Dr **P** rightly held liable for professional misconduct — Maharashtra Medical Council Act, 1965 (46 of 1965), S. 22(1)*

Since ancient times, certain duties and responsibilities have been cast on persons who adopt the sacred profession (i.e. medicine) as exemplified by Charak's Oath (1000 BC) and the Hippocratic Oath (460 BC). It is the responsibilities that emerge from the doctor-patient relationship that forms the cornerstone of the legal implications emerging from medical practice. The existence of a doctor-patient relationship presupposes any obligations and consequent liability of the doctor to the patient. (Para 35)

When a physician agrees to attend to a patient, there is an unwritten contract between the two. The patient entrusts himself to the doctor and the doctor agrees to do his best, at all times, for the patient. Such doctor-patient contract is almost always an implied contract, except when written informed consent is obtained. While a doctor cannot be forced to treat any person, he/she has certain responsibilities for those whom he/she accepts as patients. Some of these responsibilities may be recapitulated, in brief:

(*a*) *to continue to treat*, except under certain circumstances when doctor can abandon his patient;

(*b*) *to take reasonable care* of his patient;

(*c*) *to exhibit reasonable skill*: The degree of skill a doctor undertakes is the average degree of skill possessed by his professional brethren of the same standing as himself. The best form of treatment may differ when different choices are available. There is an implied contract between the doctor and patient where the patient is told, in effect, "Medicine is not an exact science. I shall use my experience and best judgment and you take the risk that I may be wrong. I guarantee nothing."

(*d*) *not to undertake any procedure beyond his control*: This depends on his qualifications, special training and experience. The doctor must always ensure that he is reasonably skilled before undertaking any special procedure/treating a complicated case.

(*e*) *professional secrets*: A doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication. (Para 37)

Thus, the formation of a doctor-patient relationship is integral to the formation of a legal relationship and consequent rights and duties, forming the basis of liability of a medical practitioner. Due to the very nature of the medical profession, the degree of responsibility on the practitioner is higher than that of any other service provider. The concept of a doctor-patient relationship forms the foundation of legal obligations between the doctor and the patient. (Para 38)

Once, it is found that there is "duty to treat" there would be a corresponding "duty to take care" upon the doctor qua his patient. In certain contexts, the duty acquires ethical character and in certain other situations, a legal character. Whenever the principle of "duty to take care" is founded on a contractual relationship, it acquires a legal character. Contextually speaking, legal "duty to treat" may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. The ethical "duty to treat" on the part of doctors is clearly covered by the Code of Medical Ethics, 1972. Clause 10 of this

Code deals with "obligation to the sick" and Clause 13 casts obligation on the part of the doctors with the caption "Patient must not be neglected". Whenever there is a breach of the Code of Medical Ethics, the aggrieved patient or the party can file a petition before the relevant disciplinary committee constituted by the State Medical Council concerned. (Para 39)

The defence put by the appellant in the trial court was that the complainant's wife (the patient) was not his patient but the same has rightly been rejected by the courts below in view of plethora of evidence establishing otherwise. The documentary medical records of surgical operation pointed to the appellant as the operating surgeon, the oral and documentary proof both impliedly and explicitly leads to the creation of contractual agreement between the patient and the appellant. The Constitution of India mandates under Articles 20(1) and 21 that the due process of law requires that everyone who is tried under any law before the court must have some awareness of, or at least a reasonable opportunity to become aware of their legal owed duty towards its recipient. In this case at hand, the appellant was aware of his duty towards the patient as the appellant was the patient's operating surgeon. To the utter disregard of the patient, the appellant vehemently denied her to be his patient. Since the documentary evidence is conclusive in nature also all the facts which had been perused below in the courts undoubtedly point to the undeniable fact that the complainant's wife was indeed the appellant's patient. (Paras 23 to 26). *P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength **2**. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

[494]— Ethical or moral duties and liabilities of medical practitioner towards patient — *The ethical "duty to treat" on the part of doctors is clearly covered by the Code of Medical Ethics — Whenever there is a breach of the Code of Medical Ethics, the aggrieved patient or the party can file a petition before relevant disciplinary committee constituted by the State Medical Council concerned — MCI (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Chs. 3, 4, 6, 7 and 8. P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength **2**. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

[495]— Legal duties and liabilities of medical practitioner towards patient — Duty of doctor to maintain secrecy — *Held, a doctor is under a moral and legal obligation not to divulge the information/knowledge which he comes to learn in confidence from his patient and such a communication is privileged communication — Evidence Act, 1872, S. 126. P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength **2**. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

[496]— Legal duties and liabilities of medical practitioner towards patient — When arise — Need for existence of doctor-patient relationship — Said relationship, how comes into being — Implied nature of relationship in most cases — Duties of care owed by doctor to patient — Remedies available to patient in case of breach of such duties — Medical negligence involving acts or omissions — When actionable as a civil wrong under Tort of Negligence, and when actionable as a criminal offence under Ss. 336 to 338 or 304-A r/w Ss. 32, 33 & 36 IPC — Explained in detail — *Formation of a doctor-patient relationship, held, is integral to the formation of a legal relationship and consequent rights and duties, forming the basis of liability of a medical practitioner — When a physician agrees to attend to a patient, there is an unwritten contract between the two — While a doctor cannot be forced to treat any person, he/she has certain responsibilities towards those whom he/she accepts as patients — Once it is found that there is "duty to treat" there would be a corresponding "duty to take care" upon the doctor qua his patient — Whenever the principle of "duty to take care" is founded on a contractual relationship, it acquires a legal character — Contextually speaking, legal "duty to treat" may arise in a contractual relationship or governmental hospital or hospital located in a public sector undertaking. P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength **2**. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

Halsbury's Laws of England, 4th Edn., Vol. 26, pp. 17-18; 70 Corpus Juris Secundum (1951) 952, 953, Para 44; Law of Torts, Ratanlal & Dhirajlal, 24th Edn., 2002, edited by Justice G.P. Singh at pp. 441-42; Charlesworth & Percy on Negligence, 10th Edn., 2001, para 1.13, cited

(c) Government doctors/Central/State Health Services

See 'Duties of Doctors and Medical Ethics' — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

(d) MCI (Professional Conduct, Etiquette and Ethics) Regulations, 2002

— Chs. 3, 4, 6, 7 and 8 *See* 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

2. MEDICAL NEGLIGENCE

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Health and Health care, Right to, Arts. 21 and 14, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— Compensation — Apportionment of liability between Hospital and doctors — Vicarious liability of Hospital *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Compensation — Non-applicability of multiplier method *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Computation of compensation *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

— Criminal medical negligence *See* (2013) 10 SCC 741: (2014) 1 SCC (Civ) 124

[497]— **Duties of Medical Council of India — Impartial and strict scrutiny expected from this body**. *Balram Prasad* v. *Kunal Saha*, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327: (2013) 4 CPJ 1.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 24-10-2013]

Paschim Banga Khet Mazdoor Samity v. State of W.B., (1996) 4 SCC 37, followed

— Liability for omission *See* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

See also WORDS AND PHRASES, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— Medical negligence involving acts or omissions — When actionable as a civil wrong under Tort of Negligence, and when actionable as a criminal offence under Ss. 336 to 338 or 304-A r/w Ss. 32, 33 & 36 IPC — Explained in detail *See* 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

DURA LEX SED LEX

See DOCTRINES AND MAXIMS

DUTIES OF DOCTORS AND MEDICAL ETHICS

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH

DUTIES/CONCURRENT/OVERLAPPING OBLIGATIONS

See TORT LAW

DUTY TO GIVE REASONS/RECORDING OF REASONS/SPEAKING ORDER

See ADMINISTRATIVE LAW — 'Natural Justice'

See also NATURAL JUSTICE

EACH POWER VIS-À-VIS THE OTHER POWER(S)

See CONSTITUTIONAL LAW — 'Grant and Separation of powers'

EARNEST MONEY/REFUND OF CONTRACTUAL PRICE/DEPOSIT

See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Remedies for Breach of Contract — Specific Remedies

See also HOUSING, CONSTRUCTION AND REAL ESTATE

EASEMENTS ACT, 1882

See PROPERTY LAW

EDUCATIONAL SERVICES

See CONSUMER PROTECTION — 'Services'

EFFECT OF NON-COMPLIANCE WITH NATURAL JUSTICE

See CONSTITUTION OF INDIA — 'Article 14' — Procedural Equality — Natural Justice

EFFECT OF VIOLATION OF NATURAL JUSTICE: VOID OR VOIDABLE

See NATURAL JUSTICE

EJUSDEM GENERIS

See ADMINISTRATIVE LAW — 'Subordinate/Delegated Legislation' — Interpretation of Subordinate/Delegated Legislation — Subsidiary Rules

ELECTRICITY

See INFRASTRUCTURE LAWS — 'Energy and Power'

ELECTRICITY OFFICERS AND PERSONNEL

— Duties of care *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

ELIGIBILITY AND RIGHT TO PRACTISE MEDICINE OPERATE/RUN CLINICS/ NURSING HOMES/HOSPITALS, ETC.

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH

EMBEZZLEMENT/BANK SCAM/CRIMINAL CONSPIRACY/FORGERY

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See CONSTITUTIONAL LAW

See also LAND ACQUISITION AND REQUISITION

EMINENT DOMAIN MATTERS/LAND ACQUISITION

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

ENCROACHMENT/ILLEGAL/UNAUTHORISED CONSTRUCTIONS/DEVELOPMENT

See LOCAL GOVERNMENT — 'Town Planning'

ENCUMBRANCES AND CHARGES

See PROPERTY LAW

ENFORCEMENT/EXECUTION OF COURT ORDERS

See CIVIL SUIT

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power

See also PRACTICE AND PROCEDURE

ENHANCEMENT/RATE OF INTEREST/ REDUCTION/USURY PROHIBITION

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS

Synopsis

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1. BANGALORE LICENSING AND CONTROLLING OF PLACES OF PUBLIC AMUSEMENTS ORDER, 1989

— Applicability of the Order *See* 'Entertainment and Leisure Establishments', (2013) 14 SCC 592: (2014) 3 SCC (Civ) 503

2. CINEMAS, VIDEOS AND CABLE TELEVISION

(a) Cinemas

[498]— Cinema theatres and multiplexes — Safety standards — Supreme Court suggestions to Government for consideration and implementation in *Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481 — Lack of any progress till date — *Left open to the Victims' Association or any other public spirited person to seek implementation of the said directions in appropriate proceedings* (Para 220). *Sushil Ansal* v. *State*, (2014) 6 SCC 173: (2014) 2 SCC (Cri) 717: (2014) 3 SCC (Civ) 343.

Bench Strength 2. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

(b) Cinematograph Act, 1952

— Ss. 5-A(1) proviso and 12 *See also* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Ss. 10, 12 and 14 *See also* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Ss. 10, 12, 14 and 16 *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

See also TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Ss. 10, 12 and 16 *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— S. 14 *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

(c) Delhi Cinematograph Rules, 1953

— Rr. 10, 24, 37 and Sch. I *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

See also TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

[499]— Rr. 10, 24, 37 and Sch. I — Notification under dated 30-9-1976 issued by State of Delhi, permitting Uphaar Cinema addition of 100 more seats to its existing capacity — Withdrawal of — Whether additional seats permitted under the Notification could legally continue in Cinema on basis of principles underlying S. 6, General Clauses Act, 1897 — Rejecting such contention, held, S. 6, General Clauses Act does not have any application to repeal of any rule, notification or order — *Further held, power to withdraw a notification cannot remain meaningful and effectively exercised if withdrawal is to leave the benefit under the withdrawn notification flowing in perpetuity — Also, such question could and ought to have been argued before the High Court in the writ petition filed by the occupiers (appellant-accused A-1 and A-2 herein) of Cinema hall, in* Isherdas Sahni, *AIR 1980 Del 147 but was not urged before the High Court in support of the challenge to the demand for the removal of the seats — Hence it could not be raised now — General Clauses Act, 1897, Ss. 6 and 21 — Constitution of India, Arts. 226 and 136. Sushil Ansal* v. *State*, (2014) 6 SCC 173: (2014) 2 SCC (Cri) 717: (2014) 3 SCC (Civ) 343.

Bench Strength 2. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

(c) Delhi Cinematograph Rules, 1953 *(contd.)*

R. v. Pittwood, (1902) 19 TLR 37; State of Orissa v. Titaghur Paper Mills Co. Ltd., 1985 Supp SCC 280: 1985 SCC (Tax) 538; Union of India v. Glaxo India Ltd., (2011) 6 SCC 668, clarified

— Rr. 10, 24, 37 and Sch. I Paras 3, 6, 7, 8, 9, 10, 13, 15 and 16 *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Rr. 10, 24, 37 and Sch. I Paras 3, 6, 7, 8, 9, 10, 13, 15, 16 and 34 to 36 *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— R. 10(1) *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

3. ENTERTAINMENT AND LEISURE ESTABLISHMENTS

[500]— "Place of public amusement" and "place of public entertainment" — Legislative intent in making distinction between the two must be kept in mind — Dominant purpose for which the premises put to use has to be examined — *A restaurant and bar falling within the definition of "place of public entertainment" under S. 2(15) of 1963 Act cannot be treated also a "place of public amusement" under S. 2(14) of 1963 Act merely because a live band is also provided there — Since 1989 Licensing Order pertains to "place of public amusement" alone, it would not apply to restaurants and bars — Karnataka Police Act, 1963 (4 of 1964), Ss. 2(14), (15) and 31(1)(w) & (6) — Bangalore Licensing and Controlling of Places of Public Amusements Order, 1989 — Calcutta Municipal Corporation Act, 1951 (33 of 1951), S. 443*

Having regard to the different terminologies, defining "a place of public amusement" as well as "a place of public entertainment", in order to find out whether a place can come within the definition of both, one will have to examine the dominant purpose for which the premises is put to use. (Para 14)

A place to which the public are admitted and where any kind of food and drinks are supplied for consumption in the premises, would undoubtedly come within the expression "place of public entertainment" and in the case in hand the restaurant and the bar in question would come within the aforesaid definition of "place of public entertainment". The very fact that "the place of public amusement" has been defined to mean any place where music, singing, dancing or gaming is provided and to that place public are admitted emphasises that the place in question before attracting the definition must essentially be used for either providing music, singing, dancing or gaming and to such premises, the public would be admitted. The later part of the definition clause in Section 2(14) of the 1963 Act by including certain other clauses of premises makes the definition, no doubt, more extensive, but that would not bring within its sweep where a premises is essentially a place of public entertainment and in that premises some music is provided for. In the case in hand, the restaurant and bar is a place to which public are admitted and food and drinks are supplied for consumption in the premises. The appellants' premises which is "a place of public entertainment" cannot be held to be also "a place of public amusement" merely because a live band is also provided in the place of entertainment where food and drinks are served and consequently the provisions of the Licensing Order will have no application to such premises. The Licensing Order is an order for controlling places of public amusement. Though Section 31 of the 1963 Act confers power on the authority to issue the Licensing and Controlling Orders both in respect of "place of public amusement" and "place of public entertainment", but in the case in hand the Order has been made only in respect of "public amusement". (Paras 15 and 16). *Mohan H. Pai* v. *Commr. of Police*, (2013) 14 SCC 592: (2014) 3 SCC (Civ) 503.

Bench Strength **3**. Coram: *G.B. Pattanaik, C.J.* and *H.K. Sema* and *S.B. Sinha*, JJ. [Date of decision: 28-11-2002]

Calcutta Municipal Corpn. v. East India Hotels Ltd., (1994) 5 SCC 690; Markand Saroop Aggarwal v. M.M. Bajaj, (1979) 1 SCC 116; M.J. Sivani v. State of Karnataka, (1995) 6 SCC 289, distinguished

— Safety in — Occupier's liability *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

See also TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Causation of harm — Principle of "causa causans" explained *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Concurrent/ Additional contractual or statutory duties of care *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Effect of additional statutory duties where a common law duty of care exists *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Good faith defence — When available *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Joint and several liability when many persons grossly breached duties of care to victims concerned *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Non-derogable nature of *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Safety in — Occupier's liability — Standard of care when contractual relationship for consideration exists — Occupier's liability when persons enter premises concerned for contractual consideration *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

4. LIQUOR

(a) Licence fee

[501]— Recovery of balance fee after cancellation of the licence — Challenge to — *Held, cannot be adjudicated without examining the licences and other documents which had not been put in record by either party — Matter remanded for early adjudication after filing of relevant documents — U.P. Excise (Settlement of Licences for Retail Sale of Country Liquor) Rules, 2002. State of U.P.* v. *Indira Devi*, (2011) 15 SCC 488: (2014) 2 SCC (Civ) 624.

Bench Strength 2. Coram: *G.S. Singhvi* and *Dr B.S. Chauhan*, JJ. [Date of decision: 21-10-2009]

State of Maharashtra v. Deokar's Distillery, (2003) 5 SCC 669, explained

Indira Devi v. State of U.P., (2005) 60 ALR 58, reversed

(b) U.P. Excise (Settlement of Licences for Retail Sale of Country Liquor) Rules, 2002

— Propriety of recovering balance licence fee after cancellation of the licence *See* 'Liquor' — Licence fee, (2011) 15 SCC 488: (2014) 2 SCC (Civ) 624

ENTERTAINMENT AND LEISURE ESTABLISHMENTS

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS

EQUITABLE ESTATES AND INTERESTS

See PROPERTY LAW

EQUITY

See also HUMAN AND CIVIL RIGHTS — 'Displaced Persons and Refugees' — Evacuee Interest (Separation) Rules, 1951, R. 11-B(2)(ii), (2013) 14 SCC 590: (2014) 2 SCC (Civ) 801

— Bona fide purchaser for value — Who is *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16(c), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— Duty of court to supply omissions, correct uncertainties, and harmonise results with justice through method of free decision — Particularly where issues as to gender justice involved *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

— Equitable relief *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— Equity's darling — Bona fide purchasers for value without notice — Who are *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ex turpi causa non oritur actio *See* DOCTRINES AND MAXIMS — 'Public Policy', (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Succession Act, 1956, S. 25, (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

[502]— "Fiduciary" — Meaning — *Held, "fiduciary" refers to a person having duty to act for benefit of another, showing good faith and candour, where such other person reposes complete trust and special confidence in person owing or discharging duty, while "fiduciary relationship" refers to situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions — Trusts Act, 1882, S. 88*

In the instant case, most of the details asked for by the applicant had already been furnished. The dispute between the parties related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board. Section 8(1)(*e*) provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and conduct, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. On facts held, the examining body (the Public Service Commission) had no fiduciary relationship with examiner (interviewers) or the candidate interviewed, and hence, exemption as contemplated under Section 8(1)(*e*) cannot be claimed. The question of directing disclosure for larger public interest, therefore, would not arise at all. The interviewers hold the position of an "agent" vis-à-vis the examining body which is the "principal". (Paras 21 and 24 to 26). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength 2. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, applied

— **Fiduciary — Who is** *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(e), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **Fiduciary relationship** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **Moulding of relief — Subsequent events** *See* CIVIL PROCEDURE CODE, 1908, Ss. 96 & 100 and Or. 41 R. 33, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— **No person may benefit from his own wrong** *See* (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

— **Notice — Burden of proof** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **Relaxing technical procedural requirements** *See* CONSTITUTION OF INDIA — 'Article 136' — Exercise of power under by Supreme Court — Relief — Approach: Considerations involved therein, Arts. 136 and 142, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— **When may prevail over law** *See* CONSTITUTION OF INDIA, Arts. 142, 136 and 141, (2013) 10 SCC 673: (2014) 1 SCC (Civ) 86

ESTOPPEL, ACQUIESCENCE AND WAIVER

See PROPERTY LAW

1. ACQUIESCENCE

— Inference of — Void order affecting legal right of the party to suit — Failure of that party to challenge such order, held, cannot amount to acquiescence thereto *See* CIVIL PROCEDURE CODE, 1908, Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

2. ESTOPPEL

See 'Estoppel', (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— Applicability — Claim over one's property by fraud, by another person before certain authority — Objection filed against, by person concerned — Subsequent withdrawal of — Effect of — Whether right of person concerned over that property extinguished due to withdrawal of said objection *See* PROPERTY LAW — 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— **Estoppel/Promissory Estoppel** *See* EVIDENCE ACT, 1872, S. 115, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[503]— Principle of estoppel — Nature — Held, is a doctrine based on fairness — *Evidence Act, 1872, S. 115*

It needs to be understood that the rule of estoppel is a doctrine based on fairness. It postulates the exclusion of the truth of the matter. All for the sake of fairness. A perusal of Section 115 of the Evidence Act, 1872 reveals four salient preconditions before invoking the rule of estoppel:

(*i*) *Firstly*, one party should make a factual representation to the other party;

(*ii*) *Secondly*, the other party should accept and rely upon the aforesaid factual representation;

(*iii*) *Thirdly*, having relied on the aforesaid factual representation, the second party should alter his position;

(*iv*) *Fourthly*, the instant altering of position, should be such, that it would be iniquitous to require him to revert back to the original position.

Therefore, the doctrine of estoppel would apply only when, based on a representation by the first party, the second party alters his position, in such manner, that it would be unfair to restore the initial position. (Para 35)

None of the ingredients of the principle of estoppel contained in Section 115 of the Evidence Act, can be stated to have been satisfied in the facts and circumstances of this case. Herein, the first party (appellant) has made no representation. The second party (respondent) has therefore not accepted any representation made to her. Furthermore, the second party has not acted in any manner, nor has the second party altered her position. Therefore, the question whether the restoration of the original position would be iniquitous or unfair does not arise at all. Even if consideration had passed from respondent to the appellant, on the basis of the representation made by the appellant, it could be accepted that the respondent had altered her position. However, in the present case, no consideration had passed in lieu of the transfer of the flat in question from the respondent to the appellant. Therefore, the principle of estoppel relied upon by the Cooperative Tribunal and the High Court, could not have been invoked to the detriment of the appellant in the facts and circumstances of the present case. (Paras 36 and 40). *Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength 2. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

Kasinka Trading v. Union of India, (1995) 1 SCC 274; Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1; H.R. Basavaraj v. Canara Bank, (2010) 12 SCC 458: (2010) 4 SCC (Civ) 659, followed

Pratima Chowdhury v. Kalpana Mukherjee, Civil Order No. 3039 of 2002, order dated 14-2-2006 (Cal), reversed

Lord Denning: The Discipline of Law, 7th Reprint, p. 223, cited

3. WAIVER

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 4, (2014) 11 SCC 576: (2014) 4 SCC (Civ) 163

— Ss. 4, 8, 7 and 11(6), (2014) 7 SCC 352

— Ss. 4, 12, 13, 16, 34 and 11, (2014) 11 SCC 366

See also HUMAN AND CIVIL RIGHTS — 'Displaced Persons and Refugees' — Evacuee Interest (Separation) Rules, 1951, R. 11-B(2)(ii), (2013) 14 SCC 590: (2014) 2 SCC (Civ) 801

— Inference of — Inordinate delay *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 5-A, 6, 9 and 16, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— Waiver of fundamental rights — Possibility *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Ss. 44, 45 and 107, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— Waiver of statutory right — Statutory grounds for loss of such right also made out *See* RENT CONTROL AND EVICTION — 'Eviction Decree/Order', (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— What amounts to *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304

ESTOPPEL/PROMISSORY ESTOPPEL

See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief'

See also DOCTRINES AND MAXIMS

See also ESTOPPEL, ACQUIESCENCE AND WAIVER

See also PROPERTY LAW

EVACUEE INTEREST (SEPARATION) RULES, 1951

See HUMAN AND CIVIL RIGHTS — 'Displaced Persons and Refugees'

EVICTION

See RENT CONTROL AND EVICTION — 'Public premises'

See also RENT CONTROL AND EVICTION

EVICTION DECREE/ORDER

See RENT CONTROL AND EVICTION

EVICTION SUIT/TRIAL

See RENT CONTROL AND EVICTION

EVIDENCE ACT, 1872

— S. 3 *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 168, (2013) 14 SCC 345: (2014) 2 SCC (Civ) 637

— Ss. 3 to 5 and 59 to 61 *See also* (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523

— Ss. 3 to 5 and 59 to 61 — Material other than legally admitted and proved evidence, such as RBI Committee Reports, mere averments in pleadings or unproved correspondence of parties, held, cannot form the basis of decreeing claim(s) against attached property of notified person — In the absence any evidence establishing case set out in plaint, suit liable to be dismissed *See* (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523

— Ss. 4, 16 and 114 *See* (2013) 12 SCC 468: (2014) 1 SCC (Civ) 701

— Ss. 4 and 101 to 117 *See also* (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

[504]— Ss. 4 and 101 to 117 — Presumption of fact raised by statute — Distinguished from legal fiction. *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576: (2014) 4 SCC (Cri) 65: (2014) 2 SCC (Civ) 145: AIR 2014 SC 932: 2014 Cri LJ 1098: (2014) 5 CTC 680: (2014) 102 ALR 666: (2014) 134 AIC 17: (2014) 5 LW 449: (2014) 1 Cal LJ 104.

Bench Strength **2**. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 6-1-2014]

[**Ed.**: *See also State* v. *S.J. Choudhary*, (1996) 2 SCC 428: 1996 SCC (Cri) 336; *Bharat Sanchar Nigam Ltd.* v. *Union of India*, (2006) 3 SCC 1; *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313 on the issue of temporally concordant interpretation.]

[505]— Ss. 4 and 101 to 117 — Presumptions — When may not be invoked — Truth or fact known — Held, while the truth or fact is known, there is no need or room for any presumption — *The interest of justice is best served by ascertaining the truth and the court should be furnished with the best available science and may not be left to bank upon presumptions, unless science has no answer to the facts in issue — When there is a conflict between a "conclusive proof" envisaged under law based on a presumption and a proof based on scientific advancement accepted by the world community to be correct, the latter must prevail over the former. Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576: (2014) 4 SCC (Cri) 65: (2014) 2 SCC (Civ) 145: AIR 2014 SC 932: 2014 Cri LJ 1098: (2014) 5 CTC 680: (2014) 102 ALR 666: (2014) 134 AIC 17: (2014) 5 LW 449: (2014) 1 Cal LJ 104.

Bench Strength **2**. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 6-1-2014]

Goutam Kundu v. State of W.B., (1993) 3 SCC 418: 1993 SCC (Cri) 928; Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633: (2010) 3 SCC (Civ) 501: (2010) 3 SCC (Cri) 1053; Kamti Devi v. Poshi Ram, (2001) 5 SCC 311: 2001 SCC (Cri) 892, distinguished on facts

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, WP (Cri) No. 293 of 2008, order dated 13-6-2008 (Bom), reversed

[**Ed.**: *See also State* v. *S.J. Choudhary*, (1996) 2 SCC 428: 1996 SCC (Cri) 336; *Bharat Sanchar Nigam Ltd.* v. *Union of India*, (2006) 3 SCC 1; *B.P. Achala*

Anand v. *S. Appi Reddy*, (2005) 3 SCC 313 on the issue of temporally concordant interpretation.]

— **S. 5** *See* S. 17

— **Ss. 5 to 16** *See also* (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

[506]— Ss. 5 to 16 — Admissibility of evidence — Scheme of Evidence Act, explained — "Facts in issue", "relevant facts" — What are — *Reiterated, evidence may be given "of every fact in issue" and of such other facts which are expressly "declared to be relevant" and of no other facts*

The expanse/sphere of admissible evidence has been postulated in Section 5 of the Evidence Act. Under Section 5, evidence may be given "of every fact in issue" and of such other facts which are expressly "declared to be relevant", and of no other facts. For the present controversy, the facts in issue are the seven bomb blasts, in seven different first class compartments, of local trains of Mumbai Suburban Railways, on 11-7-2006. But then, evidence may also be given of facts which are "declared to be relevant" under the Evidence Act. Under the Evidence Act, Sections 6 to 16 define "relevant facts", in respect whereof evidence can be given. Therefore, Sections 5 to 16 are the provisions under the Evidence Act which alone have to be relied upon for determining admissibility of evidence. (Para 11). *State of Maharashtra* v. *Kamal Ahmed Mohammed Vakil Ansari*, (2013) 12 SCC 17: (2013) 4 SCC (Cri) 202: (2014) 1 SCC (Civ) 242: AIR 2013 SC 1441: 2013 Cri LJ 2069.

Bench Strength **2**. Coram: *P. Sathasivam* and **J.S. Khehar**, JJ. [Date of decision: 14-3-2013]

— **S. 6** *See* S. 11; S. 17; S. 60

— **Ss. 7 to 16** *See* S. 17

[507]— Ss. 11, 60 and 6 — Evidence admissible under S. 11 — Distinction between "statement *of/about* existence of fact" and "statement *as to* existence of fact", explained — *Held, the former is a relevant fact and hence is admissible, while the latter is not a relevant fact, hence it is inadmissible in evidence*

The questions that arose before the Supreme Court were:

1. Whether the confessional statements of *S*, *A* and *AB*, accused in Special Case 4 of 2009, recorded before the witnesses at Serial Nos. 64 to 66 of Special Case 21 of 2006, *S*, *A* and *AB* not being accused persons in Special Case 21 of 2006, are admissible in Special Case 21 of 2006 as confessions as such? or

2. Whether the said confessional statements are admissible under Sections 6 and 11 of the Evidence Act not as confessional statements, but as "relevant facts" in Special Case 21 of 2006 and, if so, if they could be proved by the abovesaid witnesses at Serial Nos. 64 to 66 of Special Case 21 of 2006?

Allowing the appeal,

Held :

The respondent-accused in Special Case 21 of 2006 press for summoning the witnesses at Serial Nos. 63 to 66 in Special Case 21 of 2006 as defence witnesses in the instant case Special Case 21 of 2006. The object for summoning the aforesaid witnesses is that the witnesses at Serial Nos. 64 to 66 had recorded the confessional statements of *S*, *A* and *AB*, accused persons in Special Case 4 of 2009, during the course of investigation in Special Case 4 of 2009. Based inter alia on the aforesaid confessional statements, the witness at Serial No. 63 had accorded sanction for prosecution under MCOCA of the accused in Special Case 4 of 2009. The object of the respondent-accused (of producing these witnesses in defence in the instant case) is to show that others are responsible for the actions for which the respondent-accused are being blamed herein. It is relevant that the aforesaid confessional statements were not made by persons who are accused in Special Case 21 of 2006 (i.e. they are not co-accused with the respondent-accused). The confessional statements have been made during the course of investigation in Special Case 4 of 2009. The present appeal is a proceeding emerging out of Special Case 21 of 2006. The accused in Special Case 4 of 2009 are different from the accused in Special Case 21 of 2006. Importantly, Special Case 4 of 2009 is not being jointly tried with Special Case 21 of 2006. Those who had made the confessional statements before the witnesses at Serial Nos. 64 to 66, can be summoned to be produced in Special Case 21 of 2006 as defence witnesses, at the choice and asking of the respondent-accused (in Special Case 21 of 2006) for affirming or denying the correctness of the confessional statements made by them. (Paras 8 and 9)

There can certainly be no doubt about the relevance in Case 21 of 2006, of the confessional statements made by the accused in Special Case 4 of 2009, as they would clearly demonstrate the inconsistency of the case set up by the prosecution against the respondent-accused in Case 21 of 2006. In such an eventuality, there would also be no doubt that the prosecution case would be rendered highly improbable. However, the said evidence is not admissible through the summoning of the witnesses at Serial Nos. 63 to 66 in Special Case 21 of 2006 as defence witnesses in Special Case 21 of 2006 but only by summoning the accused *S*, *A* and

AB themselves who made the confessional statements in Special Case 4 of 2009. (Paras 56 and 59)

In any case, the confessional statements made by *S, A* and *AB*, would only constitute "a statement *as to* the existence of relevant facts". That would not be direct/primary evidence. The same would clearly fall in the mischief of the "hearsay rule". In order to be relevant under Section 11 of the Evidence Act, such statement ought to be "a statement *of/about* the existence of a fact", and not "a statement *as to* its existence". By following the mandate contained in Section 60 of the Evidence Act, it is not open to the respondent-accused, in view of the expressed bar contained in Section 60 of the Evidence Act, to prove the abovesaid confessional statements through the said witnesses at Serial Nos. 63 to 66 of Special Case 4 of 2009. However, the authors of the confessional statements may be produced as defence witnesses by the respondent-accused in Special Case 21 of 2006, for their statements would fall in the realm of relevance under Section 11 of the Evidence Act. (Paras 59 and 69)

The objective of the respondent-accused in seeking production of the witnesses at Serial Nos. 63 to 66 in Special Case 21 of 2006 as defence witnesses in Special Case 21 of 2006 is not to rely on the factum of a confessional statement having been recorded. The objective is to achieve exculpation of blameworthiness on the basis of the truth of the confessional statements made before the witnesses. But, it has already been held that the said witnesses sought to be produced in their defence by the respondent-accused in Special Case 21 of 2006 (the witnesses at Serial Nos. 64 to 66), cannot vouchsafe the truth or falsity of the confessional statements of *S, A* and *AB*. It is indeed the persons who had made such confessions i.e. *S, A* and *AB* who can do so. In the background of the object sought to be achieved by the respondent-accused having been clarified, it is apparent that Sections 35 and 80 of the Evidence Act would be of no avail to the respondent-accused in the facts and circumstances of this case, that the witnesses at Serial Nos. 63 to 66 cannot be summoned, as their evidence before the trial court would not fall within the realm of admissibility with reference to "facts in issue" or "relevant facts". (Paras 79 to 81)

Thus for all these reasons the respondent-accused cannot be permitted to summon the witnesses at Serial Nos. 63 to 66 in Special Case 21 of 2006 as defence witnesses in Special Case 21 of 2006 in order to substantiate the confessional statements made by *S, A* and *AB* (the accused in Special Case 4 of 2009). (Paras 82 and 83). *State of Maharashtra* v. *Kamal Ahmed Mohammed Vakil Ansari*, (2013) 12 SCC 17: (2013) 4 SCC (Cri) 202: (2014) 1 SCC (Civ) 242: AIR 2013 SC 1441: 2013 Cri LJ 2069.

Bench Strength **2**. Coram: *P. Sathasivam* and **J.S. Khehar**, JJ. [Date of decision: 14-3-2013]

Munna Lal v. Kameshari Dat, AIR 1929 Oudh 113; Bela Rani v. Mahabir Singh, ILR (1912) 34 All 341; Naima Khatun v. Basant Singh, AIR 1934 All 406; A.R.L.S.V.L. Sevugan Chettiar v. Srimathu Muthu Vijaya Raghunatha Doraisingam, AIR 1940 Mad 273; R.D. Sethna v. Mirza Mahomed Shirazi (No. 4), (1907) 9 Bom LR 1047; Nihar Bera v. Kadar Bux Mohammed, AIR 1923 Cal 290, impliedly approved

— **S. 17** *See* S. 60

See also CIVIL PROCEDURE CODE, 1908, Or. 8 Rr. 3 to 5, Or. 12 R. 6 and Or. 6 Rr. 2 to 4, (2014) 4 SCC 693: (2014) 2 SCC (Civ) 721

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 118, 54 and 122, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[508]— Ss. 17 to 31 and 5 to 16 — Admissions/Confessions — Admissibility — Determination of — Admissibility of admissions/confessions, held, depends on whether they would fall in the realm of "facts in issue" or "relevant facts" either as admissions/confessions as such or as relevant facts under Ss. 6 to 16. *State of Maharashtra* v. *Kamal Ahmed Mohammed Vakil Ansari*, (2013) 12 SCC 17: (2013) 4 SCC (Cri) 202: (2014) 1 SCC (Civ) 242: AIR 2013 SC 1441: 2013 Cri LJ 2069.

Bench Strength **2**. Coram: *P. Sathasivam* and **J.S. Khehar**, JJ. [Date of decision: 14-3-2013]

[509]— Ss. 17 to 31 and 32 — Admissions/Confessions — Evidentiary value and proof of — Principles explained in detail — *Admissions/confessions are exceptions to the "hearsay" rule — They are declarations against the interest of the person making them and are in all probability true — Probative value of an admission or a confession does not depend upon its communication to another — Truth of an admission/confession cannot be proved through a person to whom such admission/confession was made as long as the maker of the admission/confession can be examined in court and the case does not fall within exceptions enumerated expressly in S. 32. State of Maharashtra* v. *Kamal Ahmed Mohammed Vakil Ansari*, (2013) 12 SCC 17: (2013) 4 SCC (Cri) 202: (2014) 1 SCC (Civ) 242: AIR 2013 SC 1441: 2013 Cri LJ 2069.

Bench Strength **2**. Coram: *P. Sathasivam* and **J.S. Khehar**, JJ. [Date of decision: 14-3-2013]

M. Monir: Law of Evidence, 15th Edn., referred to

State of Gujarat v. Mohd. Atik, (1998) 4 SCC 351: 1998 SCC (Cri) 936, clarified and followed

— **Ss. 17, 18 and 58** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963,

Ss. 9, 10, 19(b) and 20, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

— **Ss. 17 and 58** *See* CIVIL PROCEDURE CODE, 1908, Or. 12 R. 6, (2011) 15 SCC 273: (2014) 2 SCC (Civ) 376

— Or. 12 R. 6 and Or. 7 R. 2, (2011) 15 SCC 273

See also RENT CONTROL AND EVICTION — 'Denial of Title of Landlord', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— **Ss. 17, 58 and 3** *See* CIVIL PROCEDURE CODE, 1908, Or. 18 R. 4, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

— **Ss. 17, 58 and 116 — Admission in written statement and prior proceedings** *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

— **S. 18 to 30** *See* S. 17; S. 60

— **S. 31** *See* S. 17; S. 30; S. 60

— **S. 32** *See* S. 17

— **S. 32(1)** *See* S. 63

[510]— S. 34 — General ledger entries — Evidentiary value — General ledger entries as proof of authenticity of cash transactions mentioned therein — *Held, general ledger entries cannot be the basis for accepting that cash transactions mentioned therein are correct unless there is authentic supporting material* (Para 150). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— **S. 35** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 168, (2014) 3 SCC 210: (2014) 2 SCC (Civ) 289

See also PROPERTY LAW — 'Ownership and Title', (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

— **Ss. 40 to 43** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 5, 11, 16 and 45, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642

— Ss. 34 and 24, (2014) 6 SCC 677

See also (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

— **S. 41** *See* CONSTITUTION OF INDIA, Arts. 26(d) and 226, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

See also PRACTICE AND PROCEDURE — 'Judgment/Decree/Order', (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— **S. 45** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2013) 12 SCC 455: (2014) 1 SCC (Civ) 688

[511]— S. 45 — DNA test report — Genuine DNA test result is scientifically accurate

The result of a genuine DNA test is scientifically accurate. It is nobody's case that the result of the DNA test is not genuine and, therefore, the Court has to proceed on an assumption that the result of the DNA test is accurate. The DNA test reports show that the appellant is not the biological father of the girl child. (Para 13). *Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576: (2014) 4 SCC (Cri) 65: (2014) 2 SCC (Civ) 145: AIR 2014 SC 932: 2014 Cri LJ 1098: (2014) 5 CTC 680: (2014) 102 ALR 666: (2014) 134 AIC 17: (2014) 5 LW 449: (2014) 1 Cal LJ 104.

Bench Strength **2**. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 6-1-2014]

— **S. 45 — Opinion of third party doctors is in determining medical negligence** *See* (2013) 10 SCC 741: (2014) 1 SCC (Civ) 124

— **Ss. 45 and 46 — Opinion of experts — Conduct or non-conduct of critical surgeries** *See* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

[512]— Ss. 59 t 62 and 155 — Advocate as witness — Testimony of advocate, held, carries no extra weight. *Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

— **S. 60** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 142, 145 and 138 and S. 200 CrPC, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343

— Ss. 142 and 138, (2014) 11 SCC 790

See also PRACTICE AND PROCEDURE — 'Power-of-Attorney', (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343

— **S. 60** *See* S. 11; S. 59

— **S. 61 & 62** *See* S. 59

— **S. 63** *See* S. 32(1)

— **Ss. 63 and 65** *See also* TENANCY AND LAND LAWS — 'Karnataka Land Reforms Act, 1961 (10 of 1962)', S. 48-A, (2014) 13 SCC 688: (2014) 5 SCC (Civ) 771

— **Ss. 64, 68, 72 and 144** *See* ADVOCATES — 'Notaries Act, 1952', S. 8, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **S. 65** *See* S. 63

— **S. 65-B** *See* CIVIL PROCEDURE CODE, 1908, S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— **Ss. 74 to 77 and 79** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4 and 6, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496

— **Ss. 74, 76 and 77** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18 and 23, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

— **S. 91** *See* STAMP ACT, 1899, Ss. 35, 33 & 38 and Sch. 1-A Art. 23 Expln. [as ***ins.*** vide Stamp (M.P. Second Amendment) Act, 1990], (2014) 1 SCC 618: (2014) 1 SCC (Civ) 505

— **Ss. 101 to 103** *See* CIVIL PROCEDURE CODE, 1908, Or. 6 Rr. 2 and 4 and Or. 8 Rr. 3 to 5, (2014) 4 SCC 693: (2014) 2 SCC (Civ) 721

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 34 and 5, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Partition, (2014) 4 SCC 707: (2014) 3 SCC (Civ) 126

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18 and 23, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

— Ss. 18, 23 and 24, (2013) 14 SCC 50

— S. 23, (2014) 11 SCC 307: (2014) 4 SCC (Civ) 94

— **Ss. 101 to 103 — Civil matters — Standard of proof, reiterated, is preponderance of probabilities** *See* TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— **S. 101 to 117** *See* S. 4

— **Ss. 101 to 103 and 114** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **Ss. 101 and 103** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **Ss. 101, 103, 104** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9, 10, 19(b) and 20, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

— **Ss. 103 and 102** *See* CIVIL PROCEDURE CODE, 1908, Or. 7 R. 3 & Or. 20 R. 12 and Ss. 100, 35 & 35-B, (2014) 3 SCC 645: (2014) 2 SCC (Civ) 315

— **S. 110** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38, 5 and 6, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669

See also PROPERTY LAW — 'Ownership and Title', (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

— **Ss. 111 and 101 to 104** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[513]— S. 112 — Legitimacy of child — DNA test report provides scientifically correct proof — Report of DNA test stating husband is not biological father of child, if already available, would rebut presumption of legitimacy of child under S. 112 and would prevail over such presumption — S. 112 provides for presumption of a fact, not for a legal fiction — *Husband disputed paternity of child on ground of his not having access to wife during period when she could have begotten the child — But no finding rendered by courts below on question of husband's access to wife during relevant period — DNA test conducted pursuant to court directions — Test report vindicated husband's stand that he was not father of the child — Held, scientific proof provided by DNA test report acceptable — Presumption of legitimacy of child stands conclusively rebutted — Hence direction to appellant husband to pay maintenance for said child, set aside — CrPC, 1973, S. 125. Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576: (2014) 4 SCC (Cri) 65: (2014) 2 SCC (Civ) 145: AIR 2014 SC 932: 2014 Cri LJ 1098: (2014) 5 CTC 680: (2014) 102 ALR 666: (2014) 134 AIC 17: (2014) 5 LW 449: (2014) 1 Cal LJ 104.

Bench Strength **2**. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 6-1-2014]

Goutam Kundu v. State of W.B., (1993) 3 SCC 418: 1993 SCC (Cri) 928; Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633: (2010) 3 SCC (Civ) 501: (2010) 3 SCC (Cri) 1053; Kamti Devi v. Poshi Ram, (2001) 5 SCC 311: 2001 SCC (Cri) 892, distinguished on facts

Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik, WP (Cri) No. 293 of 2008, order dated 13-6-2008 (Bom), reversed

[**Ed.**: *See also State* v. *S.J. Choudhary*, (1996) 2 SCC 428: 1996 SCC (Cri) 336; *Bharat Sanchar Nigam Ltd.* v. *Union of India*, (2006) 3 SCC 1; *B.P. Achala Anand* v. *S. Appi Reddy*, (2005) 3 SCC 313 on the issue of temporally concordant interpretation.]

[514]— S. 112 — Legitimacy of child — Paternity of child questioned by husband — Orders of court for DNA tests in absence of any finding regarding husband's access to wife during relevant period — Issue of access not raised by wife until test results found to be adverse nor orders directing DNA tests opposed by her — Orders directing DNA tests thus attaining finality, held, not open to challenge by wife subsequently on ground that issue of access had not been considered — *Taking note of appellant husband's challenge to paternity of child and his prayer for DNA test before courts below, a coordinate Bench of Supreme Court hearing husband's SLP, directed DNA test to be conducted by Regional FSL — Test report excluded husband from being biological father of child — Not being satisfied with report, wife prayed for retest — Considering serious consequences of such report, said Bench directed DNA test to be done again, by Central FSL — Test report again excluded husband from being biological father of child — Respondent wife did not oppose directions for DNA tests but only after receipt of adverse reports did she raise objection that husband having failed to establish that he had no access to her during period she could have begotten child, DNA tests ought not to have been ordered — Held, validity of orders passed by court which have attained finality, cannot be gone into at this stage — Hence, Court herein would proceed on assumption that valid directions for DNA tests given — In any case, even if said issue had not attained finality against the wife, DNA test if establishing that man concerned is not biological father of the child, shall*

amount to rebuttal of presumption under S. 112 (see *Shortnote C in SCC) — CPC, 1908, S. 11 Expln. IV. Nandlal Wasudeo Badwaik* v. *Lata Nandlal Badwaik*, (2014) 2 SCC 576: (2014) 4 SCC (Cri) 65: (2014) 2 SCC (Civ) 145: AIR 2014 SC 932: 2014 Cri LJ 1098: (2014) 5 CTC 680: (2014) 102 ALR 666: (2014) 134 AIC 17: (2014) 5 LW 449: (2014) 1 Cal LJ 104.

Bench Strength **2**. Coram: **C.K. Prasad** and *J.S. Khehar*, JJ. [Date of decision: 6-1-2014]

Goutam Kundu v. State of W.B., (1993) 3 SCC 418: 1993 SCC (Cri) 928; Banarsi Dass v. Teeku Dutta, (2005) 4 SCC 449; Bhabani Prasad Jena v. Orissa State Commission for Women, (2010) 8 SCC 633: (2010) 3 SCC (Civ) 501: (2010) 3 SCC (Cri) 1053, distinguished on facts

— **S. 114** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

See also FAMILY AND PERSONAL LAWS — 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **S. 114 Ill. (e)** *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— **S. 114 Ill. (g)** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 27 and 25(c), (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

See also GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

— **Ss. 114 Ill. (g) and 4** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **S. 115** *See* CIVIL PROCEDURE CODE, 1908, Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

See also ESTOPPEL, ACQUIESCENCE AND WAIVER — 'Estoppel', (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also PROPERTY LAW — 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

See also TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

[515]— S. 115 — Rule of estoppel under — Applicability — Conditions to be satisfied before invoking rule of estoppel, enumerated — *On facts, where none of the conditions contained in S. 115 were satisfied, Cooperative Tribunal and High Court were not justified in invoking the principle of estoppel to hold that appellant was estopped from denying transfer of her cooperative society membership/flat to respondent, so as to deny relief to appellant — Transfer found invalid, and flat restored to appellant. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

Kasinka Trading v. Union of India, (1995) 1 SCC 274; Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1; H.R. Basavaraj v. Canara Bank, (2010) 12 SCC 458: (2010) 4 SCC (Civ) 659, followed

Pratima Chowdhury v. Kalpana Mukherjee, Civil Order No. 3039 of 2002, order dated 14-2-2006 (Cal), reversed

Lord Denning: The Discipline of Law, 7th Reprint, p. 223, cited

— **S. 116** *See* RENT CONTROL AND EVICTION — 'Landlord-Tenant Relationship', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

— 'M.P. Accommodation Control Act, 1961 (41 of 1961)', S. 12(1)(c), (2014) 11 SCC 438

— **Ss. 124 and 128** *See* SALES TAX AND VAT — 'Maharashtra Value Added Tax Act, 2002 (9 of 2005)', S. 71 and S. 64, Bombay Sales Tax Act, 1959 (51 of 1959), (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

— **S. 126** *See* DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— **S. 132** *See* S. 32

— **S. 133** *See* (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

— **S. 133 r/w S. 114 Ill. (b) — Scope — Held, S. 114 Ill. (b) incorporates a rule of caution to which the courts must have regard** *See* (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

— **S. 137 — Recording of evidence of party during cross-examination — Validity of the record** *See* CIVIL PROCEDURE CODE, 1908, Or. 18 R. 4, (2013) 15 SCC 198: (2014) 5 SCC (Civ) 201

[516]— Ss. 137, 146 and 138 — Non-rebuttal of evidence — Oral submissions — Held, do not amount to rebuttal — *Respondent neither cross-examined witnesses on relevant points nor offered himself for cross-examination in respect of affidavit filed in support of his reply — Held, mere oral submissions unsupported by oral or documentary evidence would not dilute serious charges of professional misconduct and unsettle well founded findings based on evidence on record — Findings of disciplinary committee BCUP restored — Advocates Act, 1961, S. 35*

The consideration of the matter by the Disciplinary Committee, BCI is clearly flawed. It overlooked the most vital aspect that seven witnesses tendered in evidence by the complainant had stated clearly and unequivocally that the respondent advocate had filed forged and fabricated vakalatnamas on their behalf and they had not filed any compromise in the Consolidation Court. The respondent advocate had not at all cross-examined these witnesses on the above aspect although they were cross-examined on other aspects. There was ample documentary evidence as well which proved the allegations made in the complaint that the respondent advocate had filed forged and fabricated vakalatnamas as well as compromises in diverse proceedings before the Consolidation

Court. The Disciplinary Committee, BCI accepted the oral submission of the respondent advocate (the appellant therein) without realising that the respondent even did not offer himself for cross-examination in respect of the affidavit that he filed in support of his reply. As a matter of fact, the respondent advocate did not tender any evidence whatsoever in rebuttal. Mere oral submission unsupported by oral or documentary evidence on behalf of the respondent advocate did not justify reversal of thorough and well-considered finding by the Disciplinary Committee, BCUP on analysis of the oral and documentary evidence let in by the complainant in support of the complaint. (Para 9)

The findings recorded by the Disciplinary Committee, BCUP that the respondent advocate was involved in a very serious professional misconduct by filing vakalatnamas without any authority and later on filing fictitious compromises which adversely affected the interest of the parties concerned deserve to be restored. (Para 11). *Narain Pandey* v. *Pannalal Pandey*, (2013) 11 SCC 435: (2014) 1 SCC (Civ) 568: AIR 2014 SC 944: (2013) 1 CTC 104: (2013) 116 Cut LT 27: (2013) 96 ALR 275: (2013) 121 AIC 12: (2013) 1 LW 668.

Bench Strength **2**. Coram: **R.M. Lodha** and *Anil R. Dave*, JJ. [Date of decision: 10-12-2012]

— **S. 138 & 146** *See* S. 137

— **S. 155** *See* S. 59

— **III. (b) thereto** *See* S. 30

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EX DEBITO JUSTITIAE JURISDICTION

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EX DOLO MALO NON ORITUR ACTIO

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FAMILY AND PERSONAL LAWS

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1. GENERALLY

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— Basic features or structure of the Constitution — Primacy of Human Rights over any religious doctrine *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— "Domestic relationship" *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Equal entitlement to freedom of conscience — Fundamental right to — Freedom of conscience and religion — Religious values versus personal choices — Impact of religion on decisions of human beings *See* CONSTITUTION OF INDIA — 'Article 14' — Article 14

and other Articles, Arts. 14, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Religious courts — Dar-ul-Qazas/Nizam-e-Qazas — Establishment of such courts to administer justice to members of particular religion — Impermissibility *See* CONSTITUTIONAL LAW — 'Sovereignty/Sovereign functions', (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

2. ADOPTION

See also CONSTITUTION OF INDIA — 'Article 14' — Classification Rule — Particular Bases for classification — Discriminatory and Prohibited bases, Arts. 14, 15 and 44, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

— Guidelines For Adoption From India, 2006 *See* 'Adoption', (2013) 12 SCC 786: (2014) 1 SCC (Civ) 744

— Guidelines For Adoption From India, 2011 *See* 'Adoption', (2013) 12 SCC 786: (2014) 1 SCC (Civ) 744

[517]— Inter-country adoption — Procedural aspects — Guidelines of 2006, held, stand repealed by Guidelines of 2011 — Case, thus decided in terms of Guidelines of 2011, and adoption being much in the interest of the child, permitted by Supreme Court itself — *Appellant being a single woman aged 53 yrs, refused guardianship of an orphan female of ten years and permission for inter-country adoption, as prescribed maximum age of person seeking to adopt under Guidelines of 2006 was 45 yrs — The permission was refused by courts below despite no-objection being granted by Central Adoption Resource Authority (CARA) — Guidelines of 2006 framed by Government towards implementation of Supreme Court directions — Held, with advent of R. 33(2) of JJ Rules, 2007, Guidelines of 2011 were notified under S. 41(3) of JJ Act — Hence, Guidelines of 2011 will govern procedural aspects of inter-country adoptions since date of notification and Guidelines of 2006 stand repealed from that date i.e. 24-6-2011 — Appellant if found otherwise entitled for being natural guardian in accordance with Guidelines of 2011, permission for proposed adoption outside country would be warranted — In present case having regard to totality of facts, held, proposed adoption would be beneficial to child — Appellant appointed legal guardian of minor child and permission granted to take child abroad — To avoid further delay, child given in adoption to appellant — Juvenile Justice (Care and Protection of Children) Act, 2000, S. 41(3) — Juvenile Justice (Care and Protection of Children) Rules, 2007, R. 33 — Hindu Adoptions and Maintenance Act, 1956, Ss. 9, 10 and 11 — Guardians and Wards Act, 1890, Ss. 7 and 26 — Guidelines For Adoption From India, 2006 — Guidelines For Adoption From India, 2011*

Allowing the appeal,

Held :

The Guidelines of 2006 stand repealed by a fresh set of Guidelines published by Notification dated 24-6-2011 of the Ministry of Women and Child Development, Government of India under Section 41(3) of the JJ Act. The time gap between the coming into effect of the provisions of Section 41(3) of the JJ Act i.e. 22-8-2006 and the publication of the 2011 Guidelines by the Notification dated 24-6-2011 is on account of what appears to be various procedural steps that were undertaken including consultation with various bodies and the different State Governments. A reading of the Guidelines of 2011 squarely indicates that the procedural norms spelt out by the 2006 Guidelines have been more elaborately reiterated and the requirements of the pre-adoption process under Rules 33(3) and (4) of the JJ Rules, 2007 have been incorporated in the said Guidelines of 2011. As a matter of fact, by virtue of the provisions of Rule 33(2) of the JJ Rules, 2007 it is the Guidelines of 2011 notified under Section 41(3) of the JJ Act which will now govern all matters pertaining to inter-country adoptions virtually conferring on the said Guidelines a statutory flavour and sanction. Though the above may not have been the position on the date of the order of the learned trial court i.e. 17-9-2010, the full vigour of Section 41(3) of the JJ Act read with Rule 33(2) of the JJ Rules, 2007 and the Guidelines of 2011 were in operation on the date of the High Court order i.e. 9-7-2012. The Notification dated 24-6-2011 promulgating the Guidelines of 2011 would apply to all situations except such things done or actions completed before the date of the Notification in question i.e. 24-6-2011. The said significant fact apparently escaped the notice of the High Court. If the appellant is found to be so entitled, apart from declaring her to be natural guardian and grant of permission to take the child away from India, a further order permitting the proposed adoption would also be called for. (Para 8)

The facts of the present case, as evident from the pleadings of the parties and the documents brought on record, would go to show that the appellant's case for adoption has been sponsored by an agency (Journeys of the Heart, USA) rendering service in USA which is recognised by CARA. The home study report of the family of the appellant indicates that the appellant apart from being gainfully employed and financially solvent is a person of

amicable disposition who has developed affinity for Indian culture and Indian children. The appellant, though unmarried, has the support of her brother and other family members who have promised to look after the child in the event such a situation becomes necessary for any reason whatsoever. The child study report along with medical examination report prepared by the recognised agency in India has been read and considered by the appellant and it is only thereafter that she had indicated her willingness to adopt the child in question. (Para 9)

Each and every norm of the adoption process spelt out under the Guidelines of 2006, as well as the Guidelines of 2011, has been adhered to. If the foreign adoptive parent is otherwise suitable and willing, and consent of the child had also been taken (as in the present case) and the expert bodies engaged in the field are of the view that in the present case the adoption process would end in a successful blending of the child in the family of the appellant in USA, the appellant could not be understood to be disqualified or disentitled to the relief(s) sought by her in the proceedings in question. Having regard to the totality of the facts of the case the proposed adoption would be beneficial to the child apart from being consistent with the legal entitlement of the foreign adoptive parent. (Para 11)

Thus, the appellant is appointed as the legal guardian of the minor female child Tina and permission is granted to the appellant to take the child to USA. In view of the provisions of Section 41(3) of the JJ Act and to avoid any further delay in the matter which would be caused due to remand, the Supreme Court deems it appropriate to pass necessary orders giving the child Tina in adoption to the appellant. (Para 12). *Stephanie Joan Becker* v. *State*, (2013) 12 SCC 786: (2014) 4 SCC (Cri) 556: (2014) 1 SCC (Civ) 744: AIR 2013 SC 3495: (2013) 97 ALR 567: (2013) 123 AIC 1: (2013) 2 LW 589: (2013) 1 Cal LJ 140.

Bench Strength **3**. Coram: *P. Sathasivam*, **Ranjan Gogoi** and *V. Gopala Gowda*, JJ. [Date of decision: 8-2-2013]

Lakshmi Kant Pandey v. Union of India, (1984) 2 SCC 244, followed

Stephanie Joan Becker v. State, FAO No. 425 of 2010, decided on 9-7-2012 (Del), reversed

3. CENTRAL ADOPTION RESOURCE AGENCY (CARA) GUIDELINES GOVERNING THE ADOPTION OF CHILDREN, 2011

See 'Muslim Law' — Adoption, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

See also CONSTITUTION OF INDIA — 'Article 14' — Classification Rule — Particular Bases for classification — Discriminatory and Prohibited bases, Arts. 14, 15 and 44, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

4. CHILD CUSTODY

[518]— Examination by Supreme Court, of chance of reconciliation between divorced parents — Directions issued — *In present case, parties were married in USA according to Hindu rites and were also settled there — Marital disturbances between parties led to filing of legal proceedings of divorce by husband and domestic violence complaint by wife in USA Court — Custody of their child was given to wife with visitation rights to husband and wife was restricted from taking child out of country for more than 5 days — In contravention of orders of USA Court, wife took child to India and did not go back — In the meantime, divorce decree was granted by USA Court — Andhra Pradesh High Court in habeas corpus petition filed by husband directed wife to return child to USA and to submit to jurisdiction of USA courts — While examining challenge to this order by wife, Supreme Court, interviewed both husband and wife to see if they were prepared to cohabit again — Wife was willing to go back to USA and live with husband — Husband however, was not ready to cohabit with wife again — Held, sadly there is no chance of reconciliation between parties — On matter of custody of child, order of Andhra Pradesh High Court upheld with some modifications/additions to directions given by High Court — Hindu Marriage Act, 1955, S. 23(2) — Guardians and Wards Act, 1890, Ss. 7, 9, 14 and 17 — CPC, 1908, Ss. 13 and 14 — Constitution of India, Arts. 226 and 136. Arathi Bandi* v. *Bandi Jagadrakshaka Rao*, (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475: AIR 2014 SC 918.

Bench Strength **2**. Coram: **S.S. Nijjar** and *P.C. Ghose*, JJ. [Date of decision: 16-7-2013]

V. Ravi Chandran (2) v. Union of India, (2010) 1 SCC 174: (2010) 1 SCC (Civ) 44, applied

Surinder Kaur Sandhu v. Harbax Singh Sandhu, (1984) 3 SCC 698: 1984 SCC (Cri) 464, followed

H. (Infants), In re, (1966) 1 WLR 381: (1966) 1 All ER 886 (CA), held, approved

Ruchi Majoo v. Sanjeev Majoo, (2011) 6 SCC 479: (2011) 3 SCC (Civ) 396: (2011) 2 SCC (Cri) 1033, distinguished

Bandi Jagadrakshaka Rao v. Deptt. of Home, WP No. 25479 of 2009, order dated 24-9-2010 (AP), modified

Law Commission of India Report No. 218 entitled "Need to Accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)", cited

5. CHRISTIAN LAW

— Legal representatives and Heirs *See* 'Legal representatives and Heirs', (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

— Succession and Inheritance — Will *See* 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

6. CONCILIATION/MEDIATION ESTABLISHMENTS/INSTITUTIONS UNDER PERSONAL LAWS

See RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

7. DIVORCE

— Desertion *See* 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-b), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— Grounds for — "Unsoundness of mind" and "mental disorder" including schizophrenia — When may not be granted — Mere existence of mental disorder of any degree insufficient to justify dissolution of marriage — Further held, husband cannot simply abandon wife because she is suffering from sickness *See* 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(iii) Expln. and S. 9, (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168

[519]— **Welfare of child prime consideration** (Paras 41 and 42). *Kollam Chandra Sekhar* v. *Kollam Padma Latha*, (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168: (2013) 5 CTC 665: (2014) 3 Mah LJ 547: (2014) 117 Cut LT 425: (2013) 5 LW 393.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 17-9-2013]

8. DIVORCE ACT, 1869

— S. 32 — Restitution of conjugal rights *See* 'Hindu Law' — Hindu Marriage Act, 1955, S. 9, (2011) 15 SCC 531: (2014) 2 SCC (Civ) 634

9. DOMESTIC VIOLENCE

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10. GUARDIANS AND WARDS ACT, 1890

— Ss. 7, 9, 14 and 17 *See* 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

See also CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW — 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

— Ss. 7 and 26 *See* 'Adoption', (2013) 12 SCC 786: (2014) 1 SCC (Civ) 744

11. HINDU LAW

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(a) Family arrangement/settlement

[520]— **Does not effect transfer of property — Bona fide settlement — Decree in terms of cannot be disturbed** — *G, owner of immovable properties, earlier gifted some land to respondent-plaintiffs being sons of his deceased first son — Later, to avoid dispute in the family, a family settlement was entered into pursuant to which some other land settled in favour of G's other two sons — Decree passed by civil court in terms of family settlement — Suit filed by respondents against G, his other two sons and their wives (appellants) for declaration that the decree was null and void and that respondents had right to inherit the lands after death of G — Trial court held that decree in terms of family settlement amounted to alienation of suit lands without consideration and legal necessity — Appeal preferred by appellant-defendants allowed by first appellate court on findings of fact based on evidence — In second appeal, High Court set aside judgment of first appellate court and restored that of trial court — Held, family settlement was bona fide to avoid dispute in family — It did not amount to alienation of property — As decree was only in pursuance of that settlement, it could not be interfered with — High Court erred in interfering with findings of facts of first appellate court — Transfer of Property Act, 1882, S. 5 — Registration Act, 1908, S. 18(2)(i)* (Para 12). *Ganeshi* v. *Ashok*, (2011) 15 SCC 417: (2014) 2 SCC (Civ) 605: AIR 2011 SC 1340: (2011) 2 Cal LJ 121: (2012) 113 Cut LT 279: (2011) 86 ALR 482: (2011) 101 AIC 118: (2011) 5 LW 54: (2011) 3 Cal LT 35.

Bench Strength **2**. Coram: **Markandey Katju** and *Gyan Sudha Misra*, JJ. [Date of decision: 4-4-2011]

(b) Gift

See PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 123, 122 and 129 (after its amendment in 1929), (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1

(c) Hindu Adoptions and Maintenance Act, 1956

— Ss. 9, 10 and 11 *See* 'Adoption', (2013) 12 SCC 786: (2014) 1 SCC (Civ) 744

(d) Hindu Marriage Act, 1955

— Ss. 5 and 7 *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Ss. 5(i), 11 and 17 — Second marriage performed by a Hindu male with a Hindu female during subsistence of his first marriage, by suppressing fact as to earlier marriage — Right of second wife to claim

maintenance under S. 125 CrPC in such a case *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

— **S. 9** *See also* (2014) 3 SCC 712: (2014) 2 SCC (Civ) 330

[521]— S. 9 — Restitution of conjugal rights — Foundational facts to be established for claiming — Evidence of valid marriage — *Family Court finding that there was no evidence of marriage between the parties and that respondent (alleged husband) was blackmailing the appellant (alleged wife) and therefore, dismissed the petition of respondent for restitution of conjugal rights — High Court without coming to any finding on the validity of the marriage and that it was denied by the appellant started exploring possibilities of settlement between parties — Orders of High Court in this regard, held, unsustainable, hence set aside and appeal allowed with costs of Rs 2 lakhs as imposed by Family Court — Divorce Act, 1869, S. 32* (Paras 3 to 6). *Pallavi Bhardwaj* v. *Pratap Chauhan*, (2011) 15 SCC 531: (2014) 2 SCC (Civ) 634: AIR 2012 SC Supp 441: (2011) 87 ALR 887: (2011) 104 AIC 63.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 4-7-2011]

— **Ss. 9 and 5(iii)** *See* 'Matrimonial Discords/Disputes/Offences/Proceedings', (2013) 10 SCC 714: (2014) 1 SCC (Civ) 118

— **S. 12** *See* CIVIL PROCEDURE CODE, 1908, Or. 41 Rr. 23-A, 24, 25, 33 & 27, (2011) 15 SCC 300: (2014) 2 SCC (Civ) 464

[522]— S. 13(1) — Divorce — Ground of marriage being irretrievably broken down — Invoked by Supreme Court in certain cases, but in present case, since ground of mental cruelty was fully made out, not necessary to invoke the same. *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[523]— S. 13(1)(i-a) — Mental cruelty — False and vexatious criminal proceedings under Ss. 498-A/506/34 IPC against husband and his family, by wife after filing of divorce petition, held, can be considered — *Penal Code, 1860, Ss. 498-A, 506 and 34. Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[524]— S. 13(1)(i-a) — Mental cruelty — What is — Events subsequent to one spouse leaving marital home and/or subsequent to filing of divorce petition, if can be basis for — Such subsequent events established on undisputed material brought on record, can be considered — *Mental cruelty and its effect varies according to individual differences, differences in social status, differences between societies, etc. — Inference can be drawn from attending circumstances — Considering material on record from social perspective, subsequent events and kind of attitude and treatment of wife towards husband, held on facts, husband (respondent) entitled to decree of divorce against wife on ground of mental cruelty — Words and Phrases — "Cruelty" and "mental cruelty"*

The respondent husband, an Associate Professor in a Government Medical College in Bangalore, filed a petition in 2001 under Section 13(1)(*i-b*) of the Hindu Marriage Act, 1955 (the Act) seeking dissolution of marriage by way of divorce. In the petition filed before the Family Court, it was averred by the respondent husband that the marriage between the parties was solemnised in accordance with Hindu rites and customs on 23-11-1994. After the marriage the husband and wife stayed together for one-and-a-half years in the house of the father of the husband but from the very first day the appellant wife was non-cooperative, arrogant and her behaviour towards the family members of the husband was unacceptable. Despite the misunderstanding, a male child was born in the wedlock and thereafter, the wife took the child and left the house and chose not to come back to the husband or his family for a period of three years. It was pleaded that there had been a marital discord and total non-compatibility, and she had deserted him severing all ties. It was also alleged that she had left the tender child in the custody of her parents and joined a postgraduate course in the medical college of Gulbarga. All the efforts by the husband to bring her back became an exercise in futility inasmuch as the letters written by him were never replied to. Despite the non-responsive attitude of the wife, he, without abandoning the hope for reconciliation for leading a normal married life, went to the house of his in-laws, but her parents ill-treated him by forcibly throwing him out of the house. It was further asserted by the husband that after she completed her course, she started staying with her parents along with the child at Bangalore and neither he nor his family members were invited for the name giving

ceremony of the child. As set forth, the conduct of the wife caused immense mental hurt and trauma, and he suffered unbearable mental agony when the family members of his wife abused and ill-treated him while he had gone to pacify her and bring her back to the matrimonial home. All his solicitations and beseechments through letters to have normalcy went in vain which compelled him to issue a notice through his counsel but she chose not to respond to the same. Under these circumstances, the petition was filed for judicial separation and thereafter, prayer was amended seeking dissolution of marriage on the ground of desertion since she had deliberately withdrawn from his society.

The Principal Judge of the Family Court, appreciating the oral and documentary evidence on record, inter alia held that assuming there was desertion yet the same was not for a continuous period of two years immediately preceding the presentation of the petition. The Family Judge dismissed the application for divorce and allowed the application of the wife filed under Section 23(*a*) read with Section 9 of the Act for restitution of conjugal rights.

After the said judgment and decree was passed by the Family Judge, the respondent did not prefer an appeal immediately. He waited for the wife to join and for the said purpose he wrote letters to her and as there was no response, he sent a notice through his counsel. The wife, eventually, joined on 22-8-2004 at the matrimonial house being accompanied by her relative who was working in the Police Department. The wife lodged an FIR alleging demand of dowry against the husband, mother and sister as a consequence of which the husband was arrested being an accused for the offences under Sections 498-A and 506 read with Section 34 IPC and also under the provisions of the Dowry Prohibition Act. He remained in custody for a day until he was enlarged on bail. His parents were compelled to hide themselves and moved an application under Section 438 CrPC and ultimately, availed the benefit of the said provision.

After all these events took place, the husband preferred an appeal along with application for condonation of delay before the High Court. The High Court condoned the delay, took note of the grounds urged in the memorandum of appeal, appreciated the subsequent events that reflected the conduct of the wife and opined that the attitude of the wife confirmed that she never had the intention of leading a normal married life with the husband and, in fact, she wanted to stay separately with the husband and dictate terms which had hurt his feelings. The High Court further came to the conclusion that the husband had made efforts to go to Gulbarga on many an occasion, tried to convince the wife to come back to the matrimonial home, but all his diligent efforts met with miserable failure. The High Court took the view that the behaviour of the wife established that she deliberately stayed away from the marital home and intentionally caused mental agony by putting the husband and his family to go through a criminal litigation. That apart, the High Court took the long separation into account and, accordingly, set aside the judgment and decree for restitution of conjugal rights and passed a decree for dissolution of marriage between the parties.

In the present appeal before the Supreme Court, it was submitted on behalf of the appellant that when the petition for divorce was founded solely on the ground of desertion and a finding was returned by the Family Court that the ingredients stipulated under Section 13(1)(*i-b*) of the Act were not satisfied making out a case of desertion on the part of the wife, the High Court should have concurred with the same and not proceeded to make out a case for the respondent husband on the foundation of mental cruelty. It was urged by him that the High Court had taken note of subsequent events into consideration without affording an opportunity to the appellant to controvert the said material and that alone made the decision vulnerable in law.

Affirming the decree for divorce passed by the High Court and disposing of the appeal,

Held :

The petition was filed under Section 13(1)(*i-b*) of the Act but the ground of desertion could not be established. However, on a perusal of the petition it transpires that there are assertions of ill-treatment, mental agony and torture suffered by the husband. The High Court has referred to certain grounds stated in the memorandum of appeal and taken note of certain subsequent facts. But the grounds stated in the memorandum of appeal which were not established by way of evidence could not have been pressed into service or taken aid of. (Paras 22 and 24)

However, subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. (Para 27)

Having not accepted the ground of desertion, the two issues that remain for consideration are whether the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be

held that under the existing factual scenario it would not be proper to keep the marriage ties alive. Further question would arise whether in the present case, the Court should require the respondent husband to amend the petition and direct the Family Judge to consider the issue of mental cruelty or should it ignore the fetter of technicality and consider the pleadings and evidence brought on record as well as the subsequent facts which are incontrovertible so that the lis is put to rest. (Paras 27 and 28)

Mental cruelty and its effect cannot be stated with arithmetical exactitude. It varies from individual to individual, from society to society and also depends on the status of the persons. What would be mental cruelty in the life of two individuals belonging to a particular strata of the society may not amount to mental cruelty in respect of another couple belonging to a different stratum of society. The agonised feeling or for that matter a sense of disappointment can take place by certain acts causing a grievous dent at the mental level. The inference has to be drawn from the attending circumstances. Having regard to the facts and the circumstances of the present case, it must be held that the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty. (Paras 42 and 44)

The issue of mental cruelty should be addressed in the present case by the Supreme Court for the sake of doing complete justice. It is the bounden duty of the Supreme Court to do so and not to leave the parties to fight the battle afresh after expiry of thirteen years of litigation. Dealing with the plea of mental cruelty which is perceptible from the material on record would not affect any substantive right of the appellant. It would be only condoning a minor technical aspect. Administration of justice provokes the Court's judicial conscience that it is a fit case where the plenitude of power conferred on the Supreme Court under Article 142 of the Constitution deserves to be invoked, more so, when the ground is statutorily permissible. By such exercise it would neither be supplanting the substantive law nor would it be building a structure which does not exist. It would be logical to do so and illogical to refrain from doing so. (Para 28)

In the present case, the wife's allegations that the sister and brother-in-law of the husband used to interfere in the day-to-day affairs of the husband and that the sister and brother-in-law of the husband were pressurising him not to allow the wife to prosecute higher studies and to keep her as an unpaid servant in the house were not proven. The allegation that the husband was instigated to keep her at home as an unpaid servant is quite a disturbing allegation when viewed from the spectrum of gender sensitivity and any sensitive person would be hurt when his behaviour has remotely not reflected that attitude. As the evidence would show, the husband despite all his cooperation as a father, when had gone to the hospital to bring the wife and child to his house, she along with the child had gone to her parental house. This aspect of the evidence has gone totally unchallenged. Perceived from a social point of view, it reflects the egocentric attitude of the wife and her non-concern how such an act is likely to hurt the father of the child. The next thing that has come in evidence is that the respondent was not invited at the time of naming ceremony of the child. A suggestion has been given that they did not attend the ceremony as in the invitation card the names of the parents of the husband had not been printed. It has been asserted by the husband that the said incident had caused him tremendous mental pain. Viewed from a different angle, it tantamounts to totally ignoring the family of the husband. Further, it appears that the wife went to Gulbarga to join her studies and the husband was not aware of it and only came to know when one professor told about it. Thereafter he went to Gulbarga and stayed in a hotel and met the wife in the hostel on both the days. Despite his request to come to the house she showed disinclination. When he enquired about the child, he was told that the child was in her mother's house. These are the incidents which are antecedent to the filing of the petition. (Paras 36 and 37)

Thus the husband has reasons to feel that he has been humiliated, for allegations have been made against him which are not correct; his relatives have been dragged into the matrimonial controversy, the assertions in the written statement depict him as if he had tacitly conceded to have harboured notions of gender insensitivity or some kind of male chauvinism, his parents and he are ignored in the naming ceremony of the son, and he comes to learn from others that the wife had gone to Gulbarga to prosecute her studies. That apart, the communications, after the decree for restitution of conjugal rights, indicate the attitude of the wife as if she is playing a game of chess. The launching of criminal prosecution can be perceived from the spectrum of conduct. The Magistrate has recorded the judgment of acquittal. The wife had preferred an appeal before the High Court after obtaining leave. After the State Government prefers an appeal in the Court of Session, she chooses to withdraw the appeal. But she intends, as the pleadings would show, that the case should reach the logical conclusion. This conduct

manifestly shows the widening of the rift between the parties. It has only increased the bitterness. In such a situation, the husband is likely to lament in every breath and the vibrancy of life melts to give way to sad story of life. (Para 43)

From this kind of attitude and treatment it can be inferred that the husband has been treated with mental cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a government hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. (Para 44). *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[525]— S. 13(1)(i-a) — Mental cruelty as a ground for divorce — Relief clause — Appeal before Supreme Court — Ground of mental cruelty not taken in relief clause but discernible from undisputed material brought on record — *Supreme Court, held, would consider the ground in exercise of its power under Art. 142 of the Constitution to do complete justice, instead of requiring party concerned to amend petition and sending matter back to Family Court — Constitution of India, Arts. 136 and 142 — CPC, 1908, Or. 7 R. 7 and Or. 41 R. 24. Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[526]— S. 13(1)(i-b) — Desertion — Essential elements — Inference of desertion, how can be drawn — *Words and Phrases — "Desertion"*

For the offence of desertion so far as the deserting spouse is concerned, two essential conditions must be there (*1*) the factum of separation, and (*2*) the intention to bring cohabitation permanently to an end (*animus deserendi*). Similarly two elements are essential so far as the deserted spouse is concerned: (*1*) the absence of consent, and (*2*) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. For holding desertion as proved the inference may be drawn from certain facts which may not in another case be capable of leading to the same inference; that is to say the facts have to be viewed as to the purpose which is revealed by those acts or by conduct and expression of intention, both anterior and subsequent to the actual acts of separation. (Para 20)

However, in the present case, it is not established that the appellant wife had deserted the husband for a continuous period of not less than two years immediately preceding the presentation of the petition. It is because the petition was presented in the year 2001 and during the cross-examination of the husband it has been admitted by him that he had gone to Gulbarga in May 1999 for two days. The Family Court, on the basis of material brought on record, has opined that there is no sufficient evidence to come to a definite conclusion that the wife deserted him with the intention to bring the matrimonial relationship to an end and further the period of two years was not completed. The High Court has not dealt with this aspect in an appropriate manner and opined that the wife had no intention to lead a normal married life with the husband. Therefore, the allegation of desertion, as enshrined under Section 13(1)(*i-b*) has not been established. The finding on that score as recorded by the Principal Judge, Family Court, deserves to be affirmed. (Para 21)

Thus the petition was filed under Section 13(1)(*i-b*) of the Act but the ground of desertion could not be established. *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[527]— S. 13(1)(i-b) — Desertion for continuous period of 2 yrs — Husband admitted to have once stayed with wife at wife's place for 2 days within period of 2 yrs immediately preceding presentation of divorce petition by him — *Held, desertion not established. Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ

107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength 2. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

[528]— S. 13(1)(iii) Expln. and S. 9 — Divorce on grounds of "unsoundness of mind" and "mental disorder" including schizophrenia — When may not be granted — Mere existence of mental disorder insufficient to justify dissolution of marriage — Need for existence of serious mental disorder — Further held, one spouse cannot simply abandon the other spouse because the latter is suffering from sickness — *In instant case, medical report failed to support case of appellant husband that respondent was suffering from serious case of schizophrenia — Rather, report indicated that although respondent was suffering from "illness of schizophrenic type" but did not show symptoms of psychotic illness, had responded well to treatment from acute phases and her symptoms were fairly under control with medication and further that if there was good compliance with treatment coupled with good family and social support, a schizophrenic patient could continue normal conjugal and marital relationship — Besides, respondent wife had not only completed MBBS but had also done a postgraduate diploma in Medicine and was continuously working as a Government Medical Officer — Had she been suffering from any serious kind of mental disorder, it would have been impossible for her to work in said post — Impugned judgment not granting decree of divorce and allowing petition for restitution of conjugal rights, upheld — Special Marriage Act, 1954, S. 27(1)(e). Kollam Chandra Sekhar* v. *Kollam Padma Latha*, (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168: (2013) 5 CTC 665: (2014) 3 Mah LJ 547: (2014) 117 Cut LT 425: (2013) 5 LW 393.

Bench Strength 2. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 17-9-2013]

Pramatha Kumar Maity v. Ashima Maity, AIR 1991 Cal 123; Titli v. Alfred Robert Jones, AIR 1934 All 273, approved

Vinita Saxena v. Pankaj Pandit, (2006) 3 SCC 778, distinguished

John R. Searle, Minds, Brains and Science-Reith Lectures (Harvard University Press, 1984), pp. 10 and 11; McLoughlin v. O'Brian, (1983) 1 AC 410: (1982) 2 WLR 982: (1982) 2 All ER 298 (HL), cited

Kollam Padma Latha v. Kollam Chandra Sekhar, (2007) 1 ALD 598: (2007) 1 An LT 177, affirmed

Vedic Index, I, 484, 485; CHI, I, 89 as in Ranganath Misra, J. Mayne's Treatise on Hindu Law and Usage [15th Edn. (Revised), Bharat Law House, 2003] 97, relied on

[529]— S. 13-B — Divorce by mutual consent — After rejection of decree of divorce by trial court and reversal by High Court respondent contracted a second marriage but blessed with a child from first marriage — *Held, to amicably settle dispute and give quietus to litigation, respondent directed to pay Rs 5 lakhs to petitioner wife and a sum of Rs 15 lakhs to daughter — Time-frame fixed for respondent husband to hand over bank drafts to appellant in two instalments of Rs 10 lakhs each — On any default appellant can file appropriate petitions/applications before Supreme Court — Allegations made by both parties in petitions for divorce, pleadings and judgment of courts below expunged — Both parties to withdraw all pending cases — Fairness shown by both counsel appreciated. Moumita Kar Nee Halder* v. *Subrata Kar*, (2014) 13 SCC 381: (2014) 5 SCC (Civ) 723.

Bench Strength 2. Coram: *H.L. Dattu* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 10-9-2013]

Subrata Kar v. Moumita Kar Nee Halder, Civil First Appeal No. 29 of 2006, order dated 31-3-2009 (Cal), modified

[530]— S. 13-B — Divorce by mutual consent — Amicable settlement — *Memorandum of settlement dt. 17-7-2013 entered into between parties voluntarily, of their own free will and without any pressure from any quarter — Hence, accepted in interest of parties as well as three minor children and decree of divorce granted* (Paras 4 to 6). *Vimi Vinod Chopra* v. *Vinod Gulshan Chopra*, (2013) 15 SCC 547: (2014) 5 SCC (Civ) 364.

Bench Strength 2. Coram: *R.M. Lodha* and *Madan B. Lokur*, JJ. [Date of decision: 20-9-2013]

[531]— S. 13-B — Litigation quashed by Supreme Court on the basis of compromise — Litigation between appellant and respondent husband pending since year 2005 — *Twelve cases of criminal as well as matrimonial disputes pending as on today — Disputes finally settled between parties — Respondent husband agreed to pay a sum of Rs 2,25,00,000 to appellant as full and final settlement of all disputes with clear understanding that all litigations pending between them will terminate — Appellant satisfied with payments she received and she does not wish to pursue the matter any further — Both parties agreed that entire dispute should be settled here and now — All litigations pending between parties quashed/terminated — Court(s) which were seized of the matters would not be required to make any further orders in this respect — Application filed under S. 13-B of Hindu Marriage Act, allowed — Marriage between parties is dissolved — Constitution of India, Art. 136. Priyanka Khanna* v. *Amit Khanna*, (2011) 15 SCC 612: (2014) 2 SCC (Civ) 737: (2012) 1 KLT 249.

Bench Strength 2. Coram: *H.S. Bedi* and *Gyan Sudha Misra*, JJ. [Date of decision: 1-9-2011]

[532]— S. 13-B r/w Art. 142 of Constitution — Powers under Art. 142 of Constitution to do complete justice — Invocation of — Waiver of statutory period i.e. cooling off period of 6 months prior to filing of second motion under S. 13-B — *Granted, considering that parties had agreed to annulment of their marriage — Constitution of India, Art. 142* (Para 7). *Vimi Vinod Chopra* v. *Vinod Gulshan Chopra*, (2013) 15 SCC 547: (2014) 5 SCC (Civ) 364.

Bench Strength 2. Coram: *R.M. Lodha* and *Madan B. Lokur*, JJ. [Date of decision: 20-9-2013]

[533]— S. 13-B(2) — Dissolution of marriage by mutual consent — Waiver of clause regarding limitation of six months — Litigation between appellant and respondent husband pending since year 2005 — *Twelve cases of criminal as well as matrimonial disputes pending as on today — Relationship between couple had broken down in a very nasty manner — There was absolutely no possibility of a rapprochement between them even if the matter was to be adjourned for a period of six months as stipulated under S. 13-B, Hindu Marriage Act — Parties had also filed an application under S. 13-B, Hindu Marriage Act, 1955 seeking dissolution of the marriage — Petition for divorce filed by husband in year 2007 — Period of six months waived in view of compromise, and all litigations pending between parties quashed — Application filed under S. 13-B, Hindu Marriage Act allowed — Marriage between parties dissolved — Constitution of India, Art. 142* (Paras 7 to 9). *Priyanka Khanna* v. *Amit Khanna*, (2011) 15 SCC 612: (2014) 2 SCC (Civ) 737: (2012) 1 KLT 249.

Bench Strength 2. Coram: *H.S. Bedi* and *Gyan Sudha Misra*, JJ. [Date of decision: 1-9-2011]

— **S. 23(2)** *See* 'Child Custody', (2013) 15 SCC 790: (2014) 5 SCC (Civ) 475

[534]— S. 25 — Maintenance — Minor son's education and comfort — Social status and strata of parties and concept of availing effective education, to be considered — *Even if High Court failed to address this aspect, while granting divorce decree sought by husband, Supreme Court while affirming the decree, has duty to see that the son (aged 16 yrs) born in the wedlock gets acceptable comfort and financial support for proper modern education — Fact that wife (appellant) is earning would not absolve husband (respondent) from his bounden duty to provide maintenance and education for his minor son — Having regard to totality of circumstances, status and strata of parties, husband directed to pay Rs 25 lakhs for this purpose — Constitution of India, Arts. 136 and 142. Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774: AIR 2014 SC 2881: (2015) 1 MPLJ 53: (2014) 210 DLT 733: (2014) 105 ALR 664: (2015) 1 Mah LJ 107: (2014) 140 AIC 23: (2014) 3 Cal LT 70: (2014) 4 KCCR 3273.

Bench Strength 2. Coram: *S.J. Mukhopadhaya* and **Dipak Misra**, JJ. [Date of decision: 30-6-2014]

B.V. Ravi v. Malathi Ravi, MFA No. 9164 of 2004, decided on 11-9-2009 (KAR), affirmed

(e) Hindu Succession Act, 1956

— **S. 25** *See also* (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

[535]— S. 25 — Scope — Disqualification of murderer from inheritance — *Held, provision provides for statutory recognition to Hindu Law whereunder rule is applied not on basis of text but upon the principle of justice, equity and good conscience — Doctrines and Maxims — Ex turpi causa non oritur actio. CBI* v. *Ashok Kumar Aggarwal*, (2013) 15 SCC 222: (2014) 3 SCC (Cri) 634: (2014) 5 SCC (Civ) 225: (2014) 133 AIC 215.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-11-2013]

(f) Joint family/Joint family property/Joint property

— **Suit in relation to joint family property — Right of every co-sharer of such property to be substituted as LR** *See* CIVIL PROCEDURE CODE, 1908, Or. 22 Rr. 3 & 11, (2014) 6 SCC 409: (2014) 3 SCC (Civ) 575

(g) Marriage

See 'Marriage', (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168

(h) Partition

See also PROPERTY LAW — 'Partition Act, 1893', S. 4, (2011) 15 SCC 768: (2014) 2 SCC (Civ) 755

[536]— Presumption of ownership of family property — Burden of proof of exclusion of certain property from partition — General presumption is that a Hindu family is joint and properties are joint family properties — But once a partition takes place in a family, presumption would be that all properties stood partitioned — Burden of proof of exclusion of certain property from partition would be on party who asserts same to be joint — *In suit for partition and separate possession filed by plaintiff-respondents, trial court found that by virtue of an earlier family arrangement there had already been a complete partition of joint family properties, that property in question was self-acquired*

proporty of one of defendants (appellants) and that parties treated properties allotted to them pursuant to such arrangement as their exclusive properties — High Court affirmed trial courts finding that there had already been a prior final partition between parties and parties acted upon same — Having accepted that finding, held, High Court erred in placing burden of proof on defendants to prove that property in question was self-acquired property — Evidence Act, 1872, Ss. 101 to 103

The joint and undivided family being the normal condition of a Hindu family, it is usually presumed, until the contrary is proved, that every Hindu family is joint and undivided and all its property is joint. This presumption, however, cannot be made once a partition (of status or property), whether general or partial, is shown to have taken place in a family. Once a partition in the sense of division of right, title or status is proved or admitted, the presumption is that all joint property was partitioned or divided. (Para 21)

In this case, the High Court has affirmed the findings of the trial court that in 1985, there was a complete partition by virtue of a family settlement. Therefore, the presumption would be that there was complete partition of all the properties. Consequently, the burden of proof that certain property was excluded from the partition would be on the party that alleges the same to be joint property. Therefore, the High Court clearly committed an error in placing the burden of proof on the petitioners, who were defendants in the suit to prove that the property in question was a self-acquired property of one of the defendants. (Paras 21 and 22). *Kesharbai* v. *Tarabai Prabhakarrao Nalawade*, (2014) 4 SCC 707: (2014) 3 SCC (Civ) 126: AIR 2014 SC 1830: (2014) 5 Mah LJ 242: (2014) 3 MPLJ 488.

Bench Strength **2**. Coram: **S.S. Nijjar** and *Dr A.K. Sikri*, JJ. [Date of decision: 14-3-2014]

Tarabai v. Kesharbai, First Appeal No. 468 of 2004, decided on 23-3-2009 (Bom), reversed

(i) Pre-emption

See PROPERTY LAW — 'Partition Act, 1893', S. 4, (2011) 15 SCC 768: (2014) 2 SCC (Civ) 755

12. LEGAL REPRESENTATIVES AND HEIRS

[537]— **Who are — Corporate body or Collective entity — When**. *Montford Bros. of St. Gabriel* v. *United India Insurance*, (2014) 3 SCC 394: (2014) 4 SCC (Cri) 628: (2014) 2 SCC (Civ) 282: AIR 2014 SC 1550: (2014) 1 CTC 886: (2014) 4 Mah LJ 15: (2014) 2 MPLJ 715: (2014) 135 AIC 68: (2014) 3 LW 1.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh**, JJ. [Date of decision: 28-1-2014]

Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234: 1987 SCC (Cri) 482, affirmed

Megjibhai Khimji Vira v. Chaturbhai Taljabhai, AIR 1977 Guj 195, held, affirmed

Sudama Devi v. Jogendra Choudhary, AIR 1987 Pat 239, impliedly approved

13. LEGITIMACY OF CHILDREN

— Paternity — DNA test — Conclusiveness of and rebuttal of presumption under S. 112, Evidence Act, 1872 thereby *See* EVIDENCE ACT, 1872, S. 112, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

14. LIVE-IN RELATIONSHIP/PRESUMED MARRIAGE/PREMARITAL SEX

See 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

See also CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Live-in relationships — Status of *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Live-in relationships not in the nature of marriage *See also* 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

[538]— **Live-in relationships not in the nature of marriage — Inequities that exist in such relationships noticed** — *Observed, on breaking down of such relationships, woman invariably is the sufferer — Further observed, there is also no express statutory provision to regulate such types of live-in relationships upon termination or disruption — Increasing number of such relationships, calls for adequate and effective protection, especially to women, and children born from that live-in relationship — On facts, live-in relationship of appellant (unmarried woman) with respondent (married male having wife and children) for approx. 14 yrs, found not in the nature of marriage and her status found to be that of concubine or mistress with no remedy under DV Act as DV Act does not take care of such relationships — Parliament urged to bring in remedial measures through proper legislation or amendment of DV Act — Protection of Women from Domestic Violence Act, 2005, S. 2(f) — Constitution of India, Art. 15(3). Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

American Jurisprudence, 2nd Edn., Vol. 24 (2008), referred to

[539]— Live-in relationships not in the nature of marriage — Legal status — A live-in relationship between two heterosexual consenting adults, held, does not amount to any offence even though it may be perceived as immoral — *However, under the DV Act, 2005, Parliament has recognised a "relationship in the nature of marriage" and not a live-in relationship simpliciter — When may a live-in relationship qualify as a "relationship in the nature of marriage" laid down in detail*

Live-in relationship, as such, is a relationship which has not been socially accepted in India, unlike many other countries. A live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in civil law for protection of women, from being victims of such relationship, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages, etc. There are other legislations also where reliefs have been provided to women placed in certain vulnerable situations. Section 125 CrPC, of course, provides for maintenance of a destitute wife and Section 498-A IPC is related to mental cruelty inflicted on women by their husbands and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members. The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnisation of marriage and also deals with the provisions for divorce. For the first time, through, the DV Act, Parliament has recognised a "relationship in the nature of marriage" and not a live-in relationship simpliciter. (Paras 53 and 54). *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

S. Khushboo v. Kanniammal, (2010) 5 SCC 600: (2010) 2 SCC (Cri) 1299, followed

15. MAINTENANCE

See 'Hindu Law' — Hindu Marriage Act, 1955, S. 25, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

See also (2014) 12 SCC 636: (2014) 5 SCC (Civ) 145

— **Entitlement to** *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

16. MARITAL DISCORD

See (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

17. MARRIAGE

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

[540]— Concept of — *Held, marriage is voluntarily undertaken by parties in public in formal way and once concluded, recognises parties as husband and wife — Marriage, as per common law, constitutes a contract between man and woman, in which parties undertake to live together and support each other — Duties of spouses, also discussed — Words and Phrases — "Marriage". Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

[541]— Elements of common law marriage — *Held, are: (i) agreement to be married; (ii) living together as husband and wife; (iii) holding out to the public that they are married — Words and Phrases — "Marriage". Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

[542]— Legal consequences of marriage, discussed — *Held, distinction drawn between married and unmarried people, not unfair — Marriage as a social institution has great legal significance and various rights and liabilities flow out of marital relationship — Married couples have to discharge legally various rights and obligations, unlike persons having live-in relationship or marriage-like relationship or de facto relationship — Constitution of India, Art. 14 — Words and Phrases — "Marriage". Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

[543]— "Marital relationship" — Interference with — Alienation of affection towards family, by third person — *Held, is an intentional tort — Unmarried woman entering into live-in relationship with married male having wife and children in spite of opposition by her family and by wife of such married male — Held, such woman is guilty of committing intentional tort i.e. interference in marital relationship with intentionally alienating married male from his family — Wife and children of such married male can sue the woman for compensation for alienating husband/father from company of his wife/children. Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, (1928) 27 LW 678: AIR 1927 PC 185, distinguished

Gokal Chand v. Parvin Kumari, AIR 1952 SC 231, relied on

Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48: (2013) 4 SCC (Civ) 616: (2013) 3 SCC (Cri) 801, followed

V.K.V. Sarma v. Indra Sarma, ILR 2012 KAR 218: (2012) 109 AIC 602, affirmed

[544]— Marriage and live-in relationship — Distinction between

The relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest, etc., even if they are not sharing a shared household, being based on law. But live-in relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. (Para 37). *Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

— **Marriage as a civil right** *See* CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

[545]— Presumption of, through long cohabitation — When deemed to be rebutted/destroyed — *Unmarried woman knowingly entering into live-in relationship with married male having wife and children and cohabiting with him for a long time — Presumption of marriage in such situation, need not be rebutted as the same is already destroyed due to prior knowledge of woman about marital status of cohabiting male — Held, status of such woman would be that of a concubine or mistress — Evidence Act, 1872, S. 114. Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755: (2014) 6 SCC (Cri) 593: (2014) 5 SCC (Civ) 440: AIR 2014 SC 309: (2013) 4 KLT 763: (2014) 102 ALR 711: (2014) 133 AIC 225: (2014) 1 LW 561.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *P.C. Ghose*, JJ. [Date of decision: 26-11-2013]

Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy, (1928) 27 LW 678: AIR 1927 PC 185, distinguished

Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 10 SCC 48: (2013) 4 SCC (Civ) 616: (2013) 3 SCC (Cri) 801, followed

V.K.V. Sarma v. Indra Sarma, ILR 2012 KAR 218: (2012) 109 AIC 602, affirmed

[546]— Strong foundation of marriage — To weather storms and embrace sunshine, both with equanimity

Under Hindu law, marriage is an institution, a meeting of two hearts and minds and is something that cannot be taken lightly. In the Vedic period, the sacredness of the marriage tie was repeatedly declared; the family ideal was decidedly high and it was often realised. Marriage is highly revered in India and we are a nation that prides itself on the strong foundation of our marriages, come hell or high water, rain or sunshine. Life is made up of good times and bad, and the bad times can bring with it terrible illnesses and extreme hardships. The partners in a marriage must weather these storms and embrace the sunshine with equanimity. Any person may have bad health, this is not their fault and most times, it is not within their control, as in the present case, the respondent was unwell and was taking treatment for the same. The illness had its fair share of problems. But, this cannot be a reason for the appellant to abandon her and seek dissolution of marriage after the child is born from their union. The welfare of the child must be the prime consideration for both the parties. (Paras 41 and 42). *Kollam Chandra Sekhar* v. *Kollam Padma Latha*, (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168: (2013) 5 CTC 665: (2014) 3 Mah LJ 547: (2014) 117 Cut LT 425: (2013) 5 LW 393.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 17-9-2013]

Vedic Index, I, 484, 485; CHI, I, 89 as in Ranganath Misra, J. Mayne's Treatise on Hindu Law and Usage [15th Edn. (Revised), Bharat Law House, 2003] 97, relied on

18. MATRIMONIAL DISCORDS/DISPUTES/OFFENCES/PROCEEDINGS

See also 'Hindu Law' — Hindu Marriage Act, 1955, S. 13-B, (2011) 15 SCC 612: (2014) 2 SCC (Civ) 737

[547]— Proper mode of disposal — Paramount duty of court — *Both parties were minors when respondent alleged wife claims that they were married and a daughter was born when parties lived together as husband and wife — Relief sought by respondent was for restitution of conjugal rights and maintenance for child — High Court dismissing first appeal, and directing initiation of criminal proceedings for prosecution of appellant for offence punishable under S. 376 IPC — Held, High Court while rightly observing that even an illegitimate child would be entitled to maintenance failed to appreciate that essentially it was seized of a matrimonial dispute between the parties — Attitude of court in such matters should be to encourage and persuade parties to reconcile, and to refer parties to conciliation/mediation — In various proceedings between parties there is no reference to any effort made by court to adopt such a course — Instead, observations made in impugned judgment would push parties further into conflict — Paramount duty of court in matrimonial matters should be to restore peace in family — Attitude should not be to further encourage parties to litigate — Observations made by High Court in impugned judgment deprecated and deleted and impugned order set aside — Constitution of India, Art. 136 — Hindu Marriage Act, 1955, Ss. 9 and 5(iii)* (Para 7). *Bheemraya* v. *Suneetha*, (2013) 10 SCC 714: (2014) 1 SCC (Cri) 393: (2014) 1 SCC (Civ) 118: (2013) 101 ALR 719: (2013) 132 AIC 37.

Bench Strength **2**. Coram: *S.S. Nijjar* and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 23-9-2013]

Suneetha v. Bheemraya, Miscellaneous First Appeal No. 31408 of 2009, decided on 16-12-2010 (KAR), reversed

Sunita v. Mareappa, RSA No. 2589 of 2007, decided on 24-3-2008 (KAR), referred to

19. MUSLIM LAW

Synopsis

(a) Adoption	275
(b) Fatwa/Dar-ul-Qazas/Nizam-e-Qazas	276
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(a) Adoption

[548]— Adoption by Muslims permitted vide JJ Act, 2000 — Held, Muslims can adopt a child with full rights as natural parents under provisions of S. 41 of Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended in 2006) — *Juvenile Justice (Care and Protection of Children) Act, 2000, S. 41 r/w S. 2(aa) (as amended in 2006) — Juvenile Justice (Care and Protection of Children) Rules, 2007, R. 33 — Central Adoption Resource Agency (CARA) Guidelines Governing the Adoption of Children, 2011 — Constitution of India, Arts. 14, 15 and 44*

A public interest litigation (PIL) was filed under Article 32 of the Constitution requesting the Supreme Court to lay down optional guidelines to enable and facilitate adoption of children by persons irrespective of religion, caste, creed, etc. The petitioner, a Muslim and a civil rights activist had approached the Supreme Court to be legally recognised as the parent of her adopted daughter. The petitioner had taken her daughter in custody way back in 1996 but under the prevailing adoption laws applicable to Muslims, the petitioner was called only a guardian and her daughter, a ward.

The petitioner in view of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 (JJ Act, 2000), stated that the prayer made in the writ petition with regard to the guidelines was satisfactorily answered and admitted before the Supreme Court that the JJ Act, 2000 is a secular law enabling any person, irrespective of the religion she professes, to take a child in adoption.

The All India Muslim Personal Law Board (AIMPLB) however raised an objection that the Islamic law (Muslim Personal Law) does not recognise adoption and instead professes "*kafala*" system under which the child is placed under a "*kafil*" who provides for the well-being of the child including financial support and is legally allowed to take care of the child. Further, the Islamic law does not recognise an adopted child to be on par with a biological child and adopted child remains the true descendant of his biological parents and not that of the "adoptive" parents.

Rejecting the objection of the AIMPLB to the extent it questioned the applicability of the JJ Act, 2000 to Muslims,

Held :

The Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006 (JJ Act, 2000), is an enabling legislation that gives a prospective parent the option of adopting an eligible child by following the procedure prescribed by the JJ Act, 2000, the Rules i.e. the Juvenile Justice

(Care and Protection of Children) Rules, 2007 and the CARA (Central Adoption Resource Agency) Guidelines, as notified under the JJ Act, 2000. The JJ Act, 2000 does not mandate any compulsive action by any prospective parent leaving such person with the liberty of accessing the provisions of the JJ Act, 2000, if he so desires. Such a person is always free to adopt or choose not to do so and, instead, follow what he comprehends to be the dictates of the Personal law applicable to him. The JJ Act, 2000 is a small step in reaching the goal enshrined by Article 44 of the Constitution. Personal beliefs and faiths, though must be honoured, cannot dictate the operation of the provisions of an enabling statute. An optional legislation that does not contain an unavoidable imperative cannot be stultified by the principles of Personal law which, however, would always continue to govern any person who chooses to so submit himself until such time that the vision of a Uniform Civil Code is achieved. The same can only happen by the collective decision of the generation(s) to come to sink conflicting faiths and beliefs that are still active as on date. (Para 13). *Shabnam Hashmi* v. *Union of India*, (2014) 4 SCC 1: (2014) 2 SCC (Cri) 225: (2014) 2 SCC (Civ) 417: AIR 2014 SC 1281: (2014) 4 Mah LJ 933: (2014) 2 KLT 444: (2014) 3 MPLJ 343.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 19-2-2014]

[**Ed.**: The facts are taken from: ttp://www.ndtv.com/article/india/when-it-comes-to-adoption-religion-no-bar-supreme-court-485800, last visited on 10-3-2014.]

[**Ed.**: This judgment has opened the doors for all the communities in India including Muslims, Christians, Parsis, Jews to adopt and also for millions of orphan children who are waiting for a home.

Earlier also, the Madras High Court in *R.R. George Christopher, In Re*, (2010) 2 LW 881, while dealing with application of Christian parents for recognising their adopted female child as natural born child, had accepted the rights of the aspiring parents to adopt under the provisions of the JJ Act, 2000. It would be relevant to mention the following few paragraphs from *R.R. George case*: (LW pp. 886 & 888, paras 13 & 22)

"13. The JJ Act for the first time provides 'adoption' as a means to rehabilitate and socially reintegrate a child. It had empowered the State Government and the JJ Board to give a child for adoption. This is the first secular law in India providing for adoption. The provision in Sections 40 and 41 are not restricted to persons belonging to particular religion alone.

* * *

22. As can be seen from the Preamble to the JJ Act, the Act itself was enacted with a view to fulfil the international obligations as well as the constitutional goal envisaged in Part IV of the Constitution. Therefore, this Court thought fit to deal with this issue in extenso. Aspiring parents, who intend to adopt children, without being inhibited by their personal laws, are entitled to adopt a child in terms of the provisons of the JJ Act."]

(b) Fatwa/Dar-ul-Qazas/Nizam-e-Qazas

[549]— Nature, scope and legal sanctity of fatwa — Fatwa, held, is an opinion, only an expert is expected to give — It is not a decree and is neither binding on anyone nor enforceable — Only an adjudication by a legal authority sanctioned by law is enforceable and binding — *Fatwa issued by whatever body, not emanating from any judicial system recognised by law, has no legal value — It is within discretion of persons concerned to obey fatwa, or defy it or simply ignore it — Hence, only voluntary submission/acceptance to fatwa is permissible — Forceful imposition/enforcement of fatwa by any person or body would be illegal and dealt with in accordance with law — CPC, 1908, S. 2(2) — Words and Phrases — "Fatwa". Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

[550]— Scope of fatwa — Held, cannot be used to punish the innocent — No religion including Islam punishes the innocent — Religion cannot be allowed to be merciless to the victim — Faith cannot be used as dehumanising force — *Muslim woman I aged 28 yrs, mother of five children allegedly raped by her father-in-law — Dar-ul-Uloom of*

Deoband quoting Holy Quran issued fatwa holding that I after her rape by father of husband cannot have physical relations with husband, hence dissolved her marriage and restrained husband from having physical relations with her — Neither I nor her husband had approached Dar-ul-Uloom for any such fatwa, which was given at instance of journalist, a total stranger — Held, such fatwa amounts to punishment to victim only — Country governed by rule of law cannot fathom it — Further held, fatwas issued by whatever body have no legal sanction and are neither binding on parties nor enforceable — Penal Code, 1860, S. 376 — Constitution of India, Arts. 21, 14, 19, 25 and 26 — Arbitration and Conciliation Act, 1996, S. 67. Vishwa Lochan Madan v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

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— Fatwa — Impact of — Equal entitlement to freedom of conscience — Fundamental right to — Freedom of conscience and religion — Religious values versus personal choices — Impact of religion on decisions of human beings *See* CONSTITUTION OF INDIA — 'Article 14' — Article 14 and other Articles, Arts. 14, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

[551]— Fatwa concerning individual Muslim — Issuance of — Locus standi/Standing to seek — At whose instance such fatwa may be issued — Advisory guidelines given — *Held, no Dar-ul-Qaza or for that matter anybody or institution by any name shall give verdict or issue fatwa touching upon rights, status and obligation of individual unless asked for by such individual concerned — In case of incapacity of individual, fatwa can be sought by any person interested in welfare of such individual — Issuance of fatwas concerning individual Muslims, at instance of complete strangers, held, is impermissible — Such fatwas can cause irreparable damage and shall be in violation of basic human rights — Further held, fatwas have no legal sanction and are not binding on anyone including the individual who had asked for it — Fatwa issued at instance of total stranger (journalist in present case), dissolving marriage of Muslim parties after wife was allegedly raped by her father-in-law, held, amounts to punishing the victim only, since such fatwa was not binding on parties — Constitution of India, Arts. 21, 14, 19, 25 and 26 — Penal Code, 1860, S. 376 — Arbitration and Conciliation Act, 1996, S. 67*

The question that arose in the present writ petition was: whether Dar-ul-Qazas/Nizam-e-Qazas established by the All India Muslim Personal Law Board to amicably settle disputes of Muslims were parallel courts and fatwas issued by them had any legal status.

Answering in the negative,

Held :

It is well settled, that adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. The decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mughal or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to

impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qazas are running a parallel judicial system is misconceived. (Para 13)

The object of establishment of a Muslim court may be laudable but there is no doubt that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the *corpus juris* of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion: it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 "Godfearing Muslims obey the fatwas". In the words of Respondent 10 "it is for the persons/parties who obtain fatwa to abide by it or not". He, however, emphasises that "persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa". *I*'s case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from having a physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached a Dar-ul-Qaza for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it. (Paras 14 and 15)

One may not object to issuance of a fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devastation, a word of caution must be added: Dar-ul-Qaza or for that matter anybody, must not give any response or issue a fatwa concerning an individual, unless asked for by the person involved or the person having a direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected is incapacitated, then any person having some interest in the matter may also seek a fatwa on their behalf. Issuance of fatwa on rights, status and obligation of individual Muslims, is not permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, are absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force. (Para 16)

Therefore, it is observed that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law. (Paras 17 and 18). *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband

had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

(c) Gift

[552]— With conditions — Validity — Gift of corpus, or, gift of usufruct of property — Distinctive effect on validity of conditions attached therewith — *Gift by transfer of corpus of immovable property has to be absolute — Such gift would be valid while any condition attached thereto which derogates from absolute dominion over property gifted would be void — But gift of usufruct of property with conditions, held, is permissible — Whether gift contemplated transfer of corpus or gift of usufruct is to be determined on consideration of text of gift deed — On examination of contents of gift deed in question, held, gift envisaged transfer of corpus of immovable property by donor to his wife and the same was valid — However, conditions stipulated in gift deed denying donee's right of alienation of gifted property and entitling donee to enjoy the property during her lifetime only, whereafter property was to devolve upon her offspring and in the absence of children, reversion thereof to the donor or his successors, amounted to imposition of restrictions on donee's absolute dominion over property, hence void*

One *SH*, belonging to Muslim community, executed a gift deed whereby a "tiled house" with open space was gifted in favour of his wife *BB*. The text of the gift deed was as follows: "The tiled house together with open space ... which was purchased by me out of my earnings ... and got the same registered ... and taken possession of the same and ever since has been under my absolute right, possession and enjoyment about there are no disputes or any joint sureties, etc. I am conveying in your favour as you are my wife and out of love to you and delivered possession of the same to you forthwith. From now onwards you shall enjoy this immovable property freely without a right to gift, sale, etc. and since you have no issue so far, you shall enjoy the property during your lifetime. Neither myself nor my successors shall raise any objection in respect of this conveyed property either against you or against your successors. We shall have no right to cancel this conveyance with silly reasons. During your lifetime you shall not alienate this property in favour of anybody and after your lifetime this property shall devolve upon your offspring and if you have no children the same shall return back to me or to my near successors with absolute rights of enjoyment and dispossession by way of gift, sale, etc. I am herewith filing transfer memos along with this deed for registration to get your name mutated in revenue records. Therefore from now onwards you shall pay the municipal taxes and shall enjoy the same freely and happily. I have handed over the link sale deed and the voucher to you. It is settled that the said voucher shall be kept with me or with my successors after your lifetime."

The donor's wife *BB* enjoyed the immovable property gifted to her during the lifetime of her husband and even after the demise of *SH*. Later *BB* sold the gifted property to the appellant. After death of *BB*, the respondents brought a suit seeking a declaration of their title over the property gifted to *BB*, recovery of possession and mesne profits on the grounds that *BB* had only life interest in the gifted property and that the respondents being LRs of *SH* came to be vested with the right and title over the gifted property after the demise of *BB*.

Relying on the judgment rendered by the Privy Council in *Nawazish Ali Khan*, (1947-48) 75 IA 62, the trial court took the view that *SH* had gifted the corpus of the immovable property to his wife and that as such all conditions expressed by the donor in the gift deed, depriving the donee of an absolute right/interest in the gifted property, were void. The trial court concluded that the gift deed was valid and that the gifted property came to be irrevocably vested in the donee *BB*. However, the appeal preferred by the respondents was allowed by the first appellate court by merely interpreting the text of the gift deed as if the controversy was in the nature of a disputed question of fact, without appreciating the legal implications pertaining to gift, under Muhammedan Law. In second appeal, the High Court too did not examine the nature and effect of the gift and affirmed the determination recorded by the first appellate court.

Allowing the appeal,

Held :

Under Muhammedan Law, a gift has to be unconditional. Therefore, conditions expressed in a gift are to be treated as void. A conditional gift is valid, but the conditions are void. (Para 13)

Muslim Law does recognise the distinction between the corpus of the property itself and the usufruct in the property. The transfer of the corpus refers to a change in ownership, while the transfer

of usufruct refers to a change in the right of its use/enjoyment, etc. In a gift which contemplates the transfer of the corpus, there is no question of such transfer being conditional. The transfer is absolute. Where a gift of corpus seeks to impose a limit, in point of time (as a life interest), the condition is void. Likewise, all other conditions, in a gift of the corpus are impermissible. In other words, the gift of the corpus has to be unconditional. Conditions are however permissible, if the gift is merely of a usufruct. Therefore, the gift of a usufruct can validly impose a limit, in point of time (as an interest, restricted to the life of the donee). (Paras 16 to 18)

In order to determine whether the gift deed in the present case envisaged a transfer of corpus, the contents of the gift deed itself has to be examined. In the deed in question, the donor after having recorded that he had absolute right of possession and enjoyment of the property and his title over the same was undisputed, sought to transfer all these rights by way of gift to his wife and delivered possession to her forthwith by stating "From now onwards you shall enjoy this immovable property freely ..." This clearly establishes the transfer of the corpus, which was in the absolute ownership of the donor, to the donee. *Secondly*, the use of the words "We shall have no right to cancel this conveyance with silly reasons" also reveals, the intention of the donor to transfer the corpus of the property, to the donee. *Thirdly*, the use of the words "Neither myself nor my successors shall raise any objection in respect of this conveyed property either against you or against your successors", recognises the rights of the donee and her successors to the extent, that in the event of transfer of the gifted property to the successors of the donee, the same would not be assailable by the donor or his successors. This also depicts, the intention of the donor to transfer the corpus of the gifted property. *Fourthly*, the expression "... after your lifetime this property shall devolve upon your offspring..." indicates that the gift deed contemplates the transfer of the gifted property by the donee, to her children, even if, such children were not the children of the donor. This too shows that the intention of the donor, contemplated the transfer of the corpus. *Fifthly*, the gift deed records "I am herewith filing transfer memos, along with this deed for registration, to get your name mutated in revenue records." This expression in the gift deed, brings out the intention of the donor, that the transfer of the gifted property should not remain a matter of understanding within the family, but should be an open declaration to the public. The assertion in the gift deed, that municipal taxes will be borne by the donee, shows that the donee was to henceforth bear all liabilities of the gifted property, as its owner. *Lastly*, the handing over of the earlier title deeds of the gifted property to the donee, by recording in the gift deed that "I have handed over the link sale deed and the voucher to you" also indicates, that the donor clearly expressed in the gift deed, that he had not retained any documents of title pertaining to the gifted property with himself, but had handed over the same to the donee. This also shows the intention of the donor to relinquish all his existing rights in the gifted property. This also shows the intent of the donor to transfer the corpus of the property to the donee. (Paras 19.1 to 19.6)

For the above reasons there can be no doubt whatsoever that the intention of the donor in the gift deed was to transfer the corpus of the immovable property to the donee, and not merely a usufruct therein. Therefore, the gift executed by the donor in favour of his wife was valid. (Para 20)

However, all the conditions depicted in the gift deed which curtail use or disposal of the property gifted are to be treated as void. Accordingly, the conditions depicted in the gift deed, that the donee would not have any right to gift or sell the gifted property, or that the donee would be precluded from alienating the gifted immovable property during her lifetime, are void. Similarly, the depiction in the gift deed, that the gifted immovable property after the demise of the donee, would devolve upon her offspring and in the event of her not bearing any children, the same would return back to the donor or to his successors, would likewise be void. (Para 21)

Having held that the gift deed irrevocably vested all rights in the immovable property in the wife of the donor, it is natural to conclude that the sale of the gifted immovable property by the donee to the appellant was legal and valid. Consequently, the claim of the respondents to the gifted property, on the demise of the donee, is not sustainable in law. (Para 22). *V. Sreeramachandra Avadhani* v. *Shaik Abdul Rahim*, (2014) 9 SCC 350: (2014) 5 SCC (Civ) 57: AIR 2014 SC 3464: (2015) 1 Mah LJ 553: (2014) 107 ALR 203: (2014) 142 AIC 99: (2015) 1 LW 118.

Bench Strength **2**. Coram: **J.S. Khehar** and *R.F. Nariman*, JJ. [Date of decision: 21-8-2014]

Asaf A. A. Fyzee: Outlines of Muhammadan Law (5th Edn., edited and revised by Tahir Mahmood, Oxford University Press); Mulla's Principles of Mahomedan Law (19th Edn., by M. Hidayatullah and Arshad Hidayatullah); Neil B.E. Baillie: Digest of Moohummudan Law (Part 1st, 2nd Edn., London: Smith, Elder & Co., 1875), relied on

Nawazish Ali Khan v. Ali Raza Khan, (1947-48) 75 IA 62: (1948) 61 LW 578: AIR 1948 PC 134, followed

Nawazish Ali Khan v. Ali Raza Khan, (1947-48) 75 IA 62: (1948) 61 LW 578: AIR 1948 PC 134, applied

V. Sreeramachandra Avadhani v. Sk. Abdul Rahim, Second Appeal No. 313 of 2004, order dated 2-8-2004 (AP), reversed

(d) Maintenance

— **Applicability of S. 125 CrPC** *See* (2014) 12 SCC 636: (2014) 5 SCC (Civ) 145

— (2014) 12 SCC 646

(e) Muslim Women (Protection of Rights on Divorce) Act, 1986

— **Ss. 3 and 5** *See* (2014) 12 SCC 636: (2014) 5 SCC (Civ) 145

20. NEW SOUTH WALES PROPERTY (RELATIONSHIPS) ACT, 1984

— **S. 4** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

21. NEW ZEALAND INTERPRETATION ACT, 1999

— **S. 29-A** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

22. RESTITUTION OF CONJUGAL RIGHTS

See 'Matrimonial Discords/Disputes/Offences/Proceedings', (2013) 10 SCC 714: (2014) 1 SCC (Civ) 118

23. SPECIAL MARRIAGE ACT, 1954

— **S. 27(1)(e)** *See* 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(iii) Expln. and S. 9, (2014) 1 SCC 225: (2014) 1 SCC (Civ) 168

24. SUCCESSION AND INHERITANCE

(a) Succession Act, 1925

— **Ss. 2(h) and 63** *See also* 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— **Ss. 2(h), 63, 74, 62, 87, 82 to 86 and 77** *See* 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— **Pt. VI** *See* 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— **Ss. 87, 74, 82 to 86, 77, 80 and 81** *See* DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Generally, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— **Ss. 213 and 52** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

(b) Will

[553]— Composite document having characteristics of both "will" and "gift" — Mode of giving effect to — Need of such document to be necessarily registered — Absence of said registration — Effect of — *Transfer of Property Act, 1882, S. 122 — Registration Act, 1908, Ss. 17(1)(a) to (c) — Succession Act, 1925, Ss. 2(h) and 63*

The issue involved in the present case was whether the recitals in Exhibit A-1 document concerning the disposition of Item 1 of Schedule 8 (relating to certain land) therein disclosed a testamentary disposition or a settlement of that item in favour of the original plaintiffs and Defendants 1 to 3 deferring its possession and enjoyment until the death of the executants.

Allowing the appeal,

Held :

A will is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. A will has three essentials i.e. (*i*) it must be a legal declaration of the testator's intention; (*ii*) that declaration must be with respect to his property; and (*iii*) the desire of the testator that the said declaration should be effectuated after his death. The essential quality of a testamentary disposition is ambulatoriness of revocability during the executant's lifetime. (Paras 12 and 13)

So far as gift/settlement is concerned, it is the transfer of existing property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. (Para 15)

The basic and fundamental difference between a will/testamentary disposition and a settlement/gift is that in the case of a will, the crucial circumstance is the existence of a provision disposing of or distributing the property of the testator to take effect on his death, whereas in the case of a gift, the provision becomes operative immediately and a transfer *in praesenti* is intended and comes into effect. A will is, therefore, revocable because no interest is intended to pass during the lifetime of the owner of the property. In the case of gift, it comes into operation immediately. Further, a gift takes effect by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. On the other hand, a "will" need not necessarily be registered. But the mere fact of registration of a "will" will not render the document a settlement. In other words, the real and the only reliable test for the purpose of finding out whether the document constitutes a will or a gift is to find out as to what exactly is the disposition which the document has made, whether it has transferred any interest *in praesenti* in favour of the settlees or it

intended to transfer interest in favour of the settlees only on the death of the settlors. (Paras 11 and 15 to 18)

In the instant case, Exhibit A-1 document has both the characteristics of a settlement and a testamentary disposition. A composite document is severable and in part clearly testamentary, such part may take effect as a will and other part if it has the characteristics of a settlement and that part will take effect in that way. In a composite document, which has the characteristics of a will as well as a gift, it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to. Therefore, it is not unusual to register a composite document which has the characteristics of a gift as well as a will. (Paras 11, 17 and 18)

Exhibit A-1 document is divided into Schedules 1 to 9. Properties described in Schedules 1 to 6 as per the terms of the document stood absolutely vested *in praesenti* and undoubtedly settled in favour of the executants' sons. Evidently, therefore, that part of the document has the characteristics of a settlement. So far as Item 1 in Schedule 8 of Exhibit A-1 is concerned, the right, title, interest, possession and ownership of the said item were with the executants and they had the full control and freedom to deal with that property as they liked unlike Schedules 1 to 6. Hence, so far as that item is concerned, the document in question cannot be construed as a settlement or a gift because there is no provision in the document transferring any interest in immovable property *in praesenti* in favour of the settlees. Examining the meaning ascribed to the various words used and the language employed in Schedule 8 of the document, the said schedule is testamentary in character. (Paras 27, 29 and 31 to 33). *Mathai Samuel* v. *Eapen Eapen*, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116: AIR 2013 SC 532: (2012) 4 KLT 743: (2013) 96 ALR 216: (2013) 121 AIC 254: (2013) 1 LW 330.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 21-11-2012]

K. Balakrishnan v. K. Kamalam, (2004) 1 SCC 581; Kale v. Director of Consolidation, (1976) 3 SCC 119, distinguished on facts

P.E. Mathai v. Eapen Cherian, Second Appeal No. 686 of 1994, decided on 12-3-2009 (Ker), reversed

[554]— Will relating to Indian Christians — Construction of — Governing rules of law and principles — *Succession Act, 1925, Pt. VI*

In the instant case, the executants were Indian Christians, the rules of law and the principles of construction laid down in the Succession Act, 1925 govern the interpretation of will. In the interpretation of will in India, regard must be had to the rules of law and construction contained in Part VI of the Succession Act, 1925 and not the rules of the interpretation of statutes. (Para 14). *Mathai Samuel* v. *Eapen Eapen*, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116: AIR 2013 SC 532: (2012) 4 KLT 743: (2013) 96 ALR 216: (2013) 121 AIC 254: (2013) 1 LW 330.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 21-11-2012]

[555]— Will/Testamentary disposition — Distinguished from gift/settlement — Tests to determine whether a document constitutes a "gift" or a "will" — *Held, unlike "gift", a "will" need not necessarily be registered — But mere registration of a "will" will not render the document a "settlement/gift" — The only reliable test to determine whether a document is "will" or "gift" is to find out whether it transferred any interest in praesenti in favour of the settlees or it intended to transfer interest in favour of the settlees only on the death of the settlors — In former case it would be a "gift" and in latter case it would be a "will" — In present case, the document in question was a composite document having characteristics of both "will" and "gift" — So far as Item 1 of Sch. 8 of that document was concerned, the document could not be construed as a "settlement/gift" but a "will" — Transfer of Property Act, 1882, S. 122 — Registration Act, 1908, Ss. 17(1)(a) to (c) — Succession and Inheritance — Succession Act, 1925, Ss. 2(h), 63, 74, 62, 87, 82 to 86 and 77 — Words and Phrases — "Will", "gift" and "settlement"*

The issue involved in the present case was whether the recitals in Exhibit A-1 document concerning the disposition of Item 1 of Schedule 8 (relating to certain land) therein disclosed a testamentary disposition or a settlement of that item in favour of the original plaintiffs and Defendants 1 to 3 deferring its possession and enjoyment until the death of the executants.

Allowing the appeal,

Held :

A will is an instrument whereunder a person makes a disposition of his properties to take effect after his death and which is in its own nature ambulatory and revocable during his lifetime. A will has three essentials i.e. (*i*) it must be a legal declaration of the testator's intention; (*ii*) that declaration must be with respect to his property; and (*iii*) the desire of the testator that the said declaration should be effectuated after his death. The essential quality of a

testamentary disposition is ambulatoriness of revocability during the executant's lifetime. (Paras 12 and 13)

So far as gift/settlement is concerned, it is the transfer of existing property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. (Para 15)

The basic and fundamental difference between a will/testamentary disposition and a settlement/gift is that in the case of a will, the crucial circumstance is the existence of a provision disposing of or distributing the property of the testator to take effect on his death, whereas in the case of a gift, the provision becomes operative immediately and a transfer *in praesenti* is intended and comes into effect. A will is, therefore, revocable because no interest is intended to pass during the lifetime of the owner of the property. In the case of gift, it comes into operation immediately. Further, a gift takes effect by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. On the other hand, a "will" need not necessarily be registered. But the mere fact of registration of a "will" will not render the document a settlement. In other words, the real and the only reliable test for the purpose of finding out whether the document constitutes a will or a gift is to find out as to what exactly is the disposition which the document has made, whether it has transferred any interest *in praesenti* in favour of the settlees or it intended to transfer interest in favour of the settlees only on the death of the settlors. (Paras 11 and 15 to 18)

In the instant case, Exhibit A-1 document has both the characteristics of a settlement and a testamentary disposition. A composite document is severable and in part clearly testamentary, such part may take effect as a will and other part if it has the characteristics of a settlement and that part will take effect in that way. In a composite document, which has the characteristics of a will as well as a gift, it may be necessary to have that document registered otherwise that part of the document which has the effect of a gift cannot be given effect to. Therefore, it is not unusual to register a composite document which has the characteristics of a gift as well as a will. (Paras 11, 17 and 18)

Exhibit A-1 document is divided into Schedules 1 to 9. Properties described in Schedules 1 to 6 as per the terms of the document stood absolutely vested *in praesenti* and undoubtedly settled in favour of the executants' sons. Evidently, therefore, that part of the document has the characteristics of a settlement. So far as Item 1 in Schedule 8 of Exhibit A-1 is concerned, the right, title, interest, possession and ownership of the said item were with the executants and they had the full control and freedom to deal with that property as they liked unlike Schedules 1 to 6. Hence, so far as that item is concerned, the document in question cannot be construed as a settlement or a gift because there is no provision in the document transferring any interest in immovable property *in praesenti* in favour of the settlees. Examining the meaning ascribed to the various words used and the language employed in Schedule 8 of the document, the said schedule is testamentary in character. (Paras 27, 29 and 31 to 33). *Mathai Samuel* v. *Eapen Eapen*, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116: AIR 2013 SC 532: (2012) 4 KLT 743: (2013) 96 ALR 216: (2013) 121 AIC 254: (2013) 1 LW 330.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 21-11-2012]

K. Balakrishnan v. K. Kamalam, (2004) 1 SCC 581; Kale v. Director of Consolidation, (1976) 3 SCC 119, distinguished on facts

P.E. Mathai v. Eapen Cherian, Second Appeal No. 686 of 1994, decided on 12-3-2009 (Ker), reversed

25. UK CIVIL PARTNERSHIP ACT, 2004

— S. 1 — Recognition of rights of civil partners (persons of same sex) *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

26. UK FAMILY LAW ACT, 1996

— Ch. IV, Ss. 30 to 63 — Rights of cohabitants under to seek reliefs if there is domestic violence *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

27. WESTERN AUSTRALIA INTERPRETATION ACT, 1984

— S. 13-A(2) — Factors that are indicators of de facto relationship *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— S. 13-A(3)(a) *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

FAMILY ARRANGEMENT/SETTLEMENT

See FAMILY AND PERSONAL LAWS — 'Hindu Law'

FATAL ACCIDENTS ACT, 1855

See TORT LAW

FATWA/DAR-UL-QAZAS/NIZAM-E-QAZAS

See FAMILY AND PERSONAL LAWS — 'Muslim Law'

FEDERAL ARBITRATION ACT (US)

See ARBITRATION

FICTITIOUS FINANCIAL ESTABLISHMENTS/ FRAUDULENT/DEPOSIT SCHEMES

See DEBT, FINANCIAL AND MONETARY LAWS — 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase'

FILLING — JUDICIAL LEGISLATION/EXECUTIVE OR LEGISLATIVE ACTION/INACTION OR GAPS — ORDERS/DIRECTIONS REDRESSING

See CONSTITUTION OF INDIA — 'Article 32' — Exercise of power under by Supreme Court — Relief

FINAL DISPOSAL BY SUPREME COURT

See CONSTITUTION OF INDIA — 'Article 136' — Exercise of power under by Supreme Court — Relief

FINAL DISPOSAL/REMAND/ORDER

See PRACTICE AND PROCEDURE

FINANCIAL INSTITUTIONS/PUBLIC PREMISES GUIDELINES RE PUBLIC SECTOR UNDERTAKINGS

See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

FINANCIAL LEASING/NON-SCHEDULED BANKS/NBFCs/CHIT FUNDS/SAVING SCHEMES/HIRE-PURCHASE

See DEBT, FINANCIAL AND MONETARY LAWS

FINDINGS OF FACT/QUESTION OF LAW OR FACT

See PRACTICE AND PROCEDURE

FOREIGN AWARDS

See ARBITRATION

FOREIGN AWARDS (RECOGNITION AND ENFORCEMENT) ACT, 1961

See ARBITRATION

FORGERY/BANK SCAM/CRIMINAL CONSPIRACY/EMBEZZLEMENT

See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks'

FORGERY/FRAUD/MALA FIDES

— Estoppel — No estoppel against fraud *See* PROPERTY LAW — 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— Fraudulent/Sham transfers — Proof of *See* RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

FORMATION DEFECTS RENDERING CONTRACTS VOID

See CONTRACT AND SPECIFIC RELIEF — 'Formation Defects — Void and Voidable Contracts'

FORMATION DEFECTS RENDERING CONTRACTS VOIDABLE

See CONTRACT AND SPECIFIC RELIEF — 'Formation Defects — Void and Voidable Contracts'

FORMATION DEFECTS — VOID AND VOIDABLE CONTRACTS

See CONTRACT AND SPECIFIC RELIEF

FORMATION DEFECTS/NON-EXISTENCE OF CONTRACT

See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Remedies for Breach of Contract — Specific Remedies — Specific Performance of Contract — Defences respecting suits for relief based on contract

FORMATION OF CONTRACT

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FORUMS BINDING ON

See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court

FRAUD/FORGERY/MALA FIDES

[556]— **Effect of fraud — Principle of "fraud and justice never dwell together" would come into play** (Para 21). *Chandradhoja Sahoo* v. *State of Orissa*, (2012) 13 SCC 419: (2014) 5 SCC (Civ) 654: AIR 2013 SC 367: (2013) 116 Cut LT 57.

Bench Strength 2. Coram: *P. Sathasivam* and **Ranjan Gogoi**, JJ. [Date of decision: 14-12-2012]

— Estoppel — No estoppel against fraud *See* PROPERTY LAW — 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— Fraudulent/Sham transfers — Proof of *See* RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

— Mala Fides/Colourable exercise of Power — Burden of Proof/Proof of/Persons to be impleaded *See* ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power — Burden of Proof/Proof of/Persons to be impleaded, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— Mala Fides/Colourable exercise of Power — Malice in law — What is *See* ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— Second marriage performed by a Hindu male with a Hindu female during subsistence of his first marriage, by suppressing fact as to earlier marriage — Right of second wife to claim maintenance under S. 125 CrPC in such a case *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

FRAUDULENT/FICTITIOUS FINANCIAL ESTABLISHMENTS/DEPOSIT SCHEMES

See DEBT, FINANCIAL AND MONETARY LAWS — 'Non-Scheduled Banks/NBFCs/Chit Funds/Saving Schemes/Financial Leasing/Hire-Purchase'

FRAUDULENT/SHAM TRANSFERS

See PROPERTY LAW

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FREEDOM OF CONSCIENCE
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FRIVOLOUS WRIT PETITION
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FUTILE APPEAL/FRIVOLOUS/INFRUCTUOUS/ ACADEMIC ISSUE/QUESTION
See CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP

GAYS/HOMOSEXUALS/LESBIANS/LGBT COMMUNITY/LGBT RIGHTS
See HUMAN AND CIVIL RIGHTS

GENDER FREEDOM AND EQUALITY
See HUMAN AND CIVIL RIGHTS

GENERAL CLAUSES ACT, 1897
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GENERAL CLAUSES ACTS
See STATUTE LAW

GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972
See ACQUISITION, REQUISITION AND NATIONALISATION
See also INSURANCE

GENERAL INSURANCE (EMERGENCY PROVISIONS) ACT, 1971
See ACQUISITION, REQUISITION AND NATIONALISATION

GENERAL ISSUES
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GENERAL PRINCIPLES FOR GRANT OF SPECIAL LEAVE
See CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136

GIFT
See FAMILY AND PERSONAL LAWS — 'Hindu Law' — 'Muslim Law'
See also PROPERTY LAW

GIFT DEED
See DEEDS AND DOCUMENTS — 'Particular Deeds, Documents and Clauses' — Property deeds and documents

GOA, DAMAN AND DIU MUNDKARS (PROTECTION FROM EVICTION) ACT, 1975 (1 OF 1976)
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GOLDEN RULE: PLAIN OR ORDINARY MEANING
See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Basic rules

GOODS AND DISTINCTIVE MARK/ CONNECTION BETWEEN BUSINESS/ BRAND
See INTELLECTUAL PROPERTY — 'Trade Marks'

GOVERNMENT CONTRACTS, PRINCIPLES FOR
See CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts

GOVERNMENT CONTRACTS/CONTRACTS/ AGREEMENTS
See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Particular deeds, documents and clauses
— 'Particular deeds, documents and clauses'

GOVERNMENT CONTRACTS/TENDERS

1. CANCELLATION/TERMINATION

— State authority itself in breach of promise on which promise of contractor was conditional — Held, non-performance by contractor in such circumstances did not permit State authority to invoke termination clause in contract *See* CONTRACT AND SPECIFIC RELIEF — 'Termination/Discharge of Contract' — Termination/Repudiation for Breach of Contract, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159

[557]— **Unilateral termination of contract by State authority — Compliance with terms of agreement pertaining to termination, prior to termination of contract — Mandatoriness of** — *Held, where agreement provides for issuance of show-cause notice before termination of a contract, compliance with said condition is mandatory since it results in serious civil consequences like forfeiture of earnest money deposit, security deposit, etc. — Chief Engineer, Irrigation (D-3) of respondent Department terminated contract of construction of irrigation canal on ground that appellant stopped and abandoned work in the middle, and forfeited earnest money, security deposit, withheld bill amount after terminating contract and imposed penalty — Sustainability — Cl. 3(d) of the contract*

provided for issuance of show-cause notice before terminating the contract — In instant case, without complying with said term of agreement, Chief Engineer (D-3) terminated the contract — Hence, held, termination of contract without issuing any show-cause notice or holding any enquiry is arbitrary and unreasonable — Thus, before terminating the contract, terms in cl. 3(d) of agreement should have been complied with, which are mandatory — Contract Act, 1872, S. 39 (Paras 50 to 53). *Ramachandra Narayan Nayak* v. *Karnataka Neeravari Nigam Ltd.*, (2013) 15 SCC 140: (2014) 5 SCC (Civ) 159.

Bench Strength **2**. Coram: *C.K. Prasad* and **V. Gopala Gowda**, JJ. [Date of decision: 27-8-2013]

Karnataka Neeravari Nigam Ltd. v. Ramachandra Narayan Nayak, RFA No. 593 of 2000, decided on 12-6-2003 (KAR), reversed

2. INTERPRETATION OF CONTRACTUAL TERMS

[558]— Circulars issued by Government — Effect of — *Held, circulars issued by Government may provide useful guidance to authorities involved in implementation of the project but the same are not conclusive of correct interpretation of relevant clauses of the agreement* (Para 35). *Vishnu* v. *State of Maharashtra*, (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455: (2013) 131 AIC 14: (2014) 3 Mah LJ 732: (2014) 3 MPLJ 678: (2013) 101 ALR 210.

Bench Strength **3**. Coram: **G.S. Singhvi**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 4-10-2013]

[559]— Interpretation given by Government — Held, is not binding on courts (Para 35). *Vishnu* v. *State of Maharashtra*, (2014) 1 SCC 516: (2014) 1 SCC (Civ) 455: (2013) 131 AIC 14: (2014) 3 Mah LJ 732: (2014) 3 MPLJ 678: (2013) 101 ALR 210.

Bench Strength **3**. Coram: **G.S. Singhvi**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 4-10-2013]

3. JUDICIAL REVIEW/INTERFERENCE/VALIDITY

See CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Alternative remedy/Exhaustion of remedies, Art. 226, (2014) 1 SCC 329: (2014) 1 SCC (Civ) 422

4. LIEN OF EMPLOYER OVER CONTRACTUAL AMOUNTS

[560]— Interest on amounts so retained — Contractual terms shall prevail — If payable in present case — Cls. 2401 and 2403 of Indian Railways Standard (IRS) being the applicable conditions of contract — *Held, employer Railway as per the contract (IRS) is entitled to withhold and have lien to retain any amount due and payable to contractor under the contract to satisfy any claims arising out of said contract or under any other contract made by contractor — Said clauses also prohibit interest on said amounts — Appellant (Railway) withheld certain amounts from contractual payments of respondents exercising its lien over such amounts in terms of Cls. 2401 and 2403 of Indian Railways Standard (IRS) conditions of contract, on ground that excess payment was made in an earlier contract — On reference of dispute as to release of said amounts to arbitrator, arbitrator allowed said claims and also granted interest from date of recovery till date of payment — Appeals filed against arbitration award contending that arbitrator exceeded his powers by awarding interest contrary to Cls. 2401 and 2403 of IRS conditions, dismissed by Single Judge of High Court — Division Bench of High Court initially directed appellants to deposit award amounts in court — Subsequently, High Court dismissed appeals holding that appellant had no authority to exercise lien on the current payments in relation to amount already released to contractors — Sustainability — In instant case, in terms of Cls. 2401 and 2403 of IRS conditions, appellant Railway is entitled to withhold and have lien to retain any amount deposited as security or any sum of money due and payable to contractor under the contract to satisfy any claims arising out of said contract or under any other contract made by contractor — Said clauses also prohibit interest on such withheld amounts — Hence, held, arbitrator failed to take into account the contractual provisions in said two clauses while awarding interest — Further, arbitrator is not empowered to grant interest for pre-arbitration period contrary to clauses of agreement — However, held, interest is payable from date of award till money is deposited in court, which was converted to fixed deposit receipts — Hence, no further interest is payable to respondents on amount already deposited in court* (Paras 17 to 21). *Union of India* v. *Concrete Products & Construction Co.*, (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551: AIR 2014 SC 1914: (2014) 5 Mah LJ 87: (2014) 3 MPLJ 481: (2014) 104 ALR 280: (2014) 136 AIC 108: (2014) 2 Cal LJ 50.

Bench Strength **2**. Coram: **S.S. Nijjar** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 3-3-2014]

Concrete Products and Construction Co. v. Union of India, Application No. 780 of 2011 in Original Petition No. 142 of 2007, order dated 24-2-2011 (Mad), affirmed

Union of India v. Concrete Products and Construction Co., Original Side Appeal No. 44 of 2012, decided on 21-3-2012 (Mad), reversed

5. TERMINATION/REPUDIATION/DISCHARGE/CANCELLATION OF CONTRACT

See ESSENTIAL COMMODITIES AND SERVICES — 'Essential Commodities Act, 1955', Ss. 5 and 3, (2013) 11 SCC 783: (2014) 1 SCC (Civ) 607

6. UNCONSCIONABLE CONTRACTS

See CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts — Government contracts, Principles for, Arts. 14, 300-A and 299, (2014) 13 SCC 341: (2014) 5 SCC (Civ) 718

GOVERNMENT DOCTORS/CENTRAL/STATE HEALTH SERVICES

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics'

GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

Synopsis

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1. ALLOTMENT/GRANT/LEASE/LICENCE OF LAND

[561]— Government licence — Renewal/Non-renewal — Powers of State — Available, so long as they are exercised for a rational reason/without arbitrariness — Allotment of plot by Board of Paradeep Port Trust to iron ore exporting/trading firms — Non-renewal of licences to attain public purpose of developing Port facilities — Held, proper, even though this ground for non-renewal was made clear only before Supreme Court — *Allotments of licences held by High Court to have been made in violation of law — Pursuant thereto cancellation of licences directed by the Board — In SLPs filed thereagainst, Board altering reason for its decision raising new reasons/grounds for termination of licences — On both grounds: (1) that appellants have no indefeasible right of renewal of licences, and (2) that Board proposes to revoke the licences and resume possession of the land for public purpose of developing the same and providing better facilities at Paradeep Port, held, there is no reason for interference with Board's decision to terminate the licences — No irrationality in decision of the Board, a public body, "State" under Art. 12 of Constitution — Board's decision to terminate the licences is consistent with policy guidelines of 2010 — Board's assertion in its additional affidavit, that existing iron ore traffic is showing a growth rate of 159.56% during current financial year (2013) and that non-availability of mechanical plots to the Paradeep Port will entail huge financial loss to the Port which is a major port, considered — Interfering with the notices of termination of licences, held, not in the larger public interest — Appellants failed to establish that Board's decision to terminate their licences is otherwise violative of any substantive right — Hence, appeals dismissed — Major Port Trusts Act, 1963, Ss. 3, 35, 48 and 49 — Easements Act, 1882, Ss. 52 and 60 to 63. Yazdani International (P) Ltd.* v. *Auroglobal Comtrade (P) Ltd.*, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161: (2014) 3 LW 450.

Bench Strength **2**. Coram: *H.L. Gokhale* and **Jasti Chelameswar, JJ.** [Date of decision: 17-12-2013]

de Smith's Judicial Review of Administrative Action, 4th Edn., p. 561; Seervai, H.M.: Constitutional Law of India [Bombay: N.M. Tripathi (P) Ltd., 3rd Edn., Vol. 2 (1984), para 16.279, p. 1367], relied on

— Grants — Period of — Benefit of changed law — Extent of *See* TENANCY AND LAND LAWS — 'Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966', (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259

— Modes permissible *See* INFRASTRUCTURE LAWS — 'Ports and Port Trusts' — Major Port Trusts Act, 1963, S. 49(3), (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

2. CANCELLATION OF AGREEMENT/CONTRACT/LICENCE

See ESSENTIAL COMMODITIES AND SERVICES — 'Essential Commodities Act, 1955', Ss. 5 and 3, (2013) 11 SCC 783: (2014) 1 SCC (Civ) 607

3. CANTONMENT LAND ADMINISTRATION RULES

— General Land Register *See*, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

4. MILITARY LAND MANUAL

— Ch. II Rr. 6(iii) and 4(C) *See*, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

5. OLD GRANT

[562]— Legal effect — *Transfer of Property Act, 1882, S. 105*

The legal effect of the terms of the old grants (in Cantonment area) have been understood to be conveying a lease of the building standing on the cantonment land with the power of resumption in the cantonment authority subject to payment of compensation for the cost of the building and not as a lease of the land itself. (Para 16). *Purshottam Das Tandon* v. *Military Estate Officer*, (2014) 9 SCC 344: (2014) 5 SCC (Civ) 50: AIR 2014 SC 3555: (2015) 1 Mah LJ 574: (2014) 106 ALR 901: (2014) 142 AIC 95.

Bench Strength **2**. Coram: **Ranjan Gogoi** and *M. Yusuf Eqbal*, JJ. [Date of decision: 13-8-2014]

[563]— Old grant tenure — Entries in General Land Register (GLR), maintained under Cantonment Land Administration Rules, showing suit land given to plaintiff's predecessor as old grant — Conclusive proof of Central Government's title over suit land — Non-production of original grant by defendant-petitioner State authorities would not raise any adverse inference — *Plaintiff-respondent, private person, claiming title, failed to produce any document to show title of predecessor-in-interest — Maxim* ***nemo dat quod non habet*** *(no one gives what he does not possess) applies — Plaintiff successor will not have better title than what his predecessor had — Evidence Act, 1872, S. 114 Ill. (g) — Transfer of Property Act, 1882, Ss. 7 and 8* (Para 18). *Union of India* v. *Robert Zomawia Street*, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633: AIR 2014 SC 2721: (2014) 104 ALR 734: (2014) 138 AIC 129.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 27-3-2014]

[564]— Old grant tenure — Settled principles reiterated — *Resumable by Central Government — Entries in General Land Register (GLR), maintained under Cantonment Land Administration Rules, held, are conclusive evidence of title of land — Entries in GLR described suit land comprising a bungalow as Class B3 land; Government of India as landlord; plaintiff as holder of occupancy right and nature of landholder right as "old grant" — In respect of old grant tenure, Central Government retains right of resumption as provided under regulation contained in Order 179 of 1836 — R. 6(iii) of Ch. II of Military Land Manual provides that B3 land "held" by private person is subject to conditions under which Central Government reserves to itself proprietary rights in soil — Reading word "held" in R. 6(iii) in context in which used, held, it does not connote ownership of land by private person — On facts held, respondent-plaintiff (private person) failed to establish his title over suit land — Hence his suit for declaration that Government's order of resumption of suit land was invalid and for permanent injunction prohibiting appellant-defendant authorities from interfering with plaintiff's possession, liable to be dismissed — Military Land Manual, Ch. II Rr. 6(iii) and 4(C) — Words and Phrases — "Held"*

Entries made in the GLR maintained under the Cantonment Land Administration Rules is conclusive evidence of title. In the present case, the entries made in the GLR show that it is an old grant and that it is managed by the plaintiff as B3 land. Class B3 is such land which is held by any private person subject to the conditions that the Central Government has proprietary rights over it. True it is that the plaintiff held the land but the word "held" does not necessarily mean to own with legal title. It is not a word of art and its meaning has to be understood in the context in which it has been used. In a given context the word "held" may connote both ownership as also possession, but it will not carry the same meaning in all context and circumstances. In the case in hand, the plaintiff held the land but being an old grant the Central Government has the right of its resumption and, therefore, it cannot be said that the plaintiff possesses the land as owner. The meaning of the word "held" in various dictionaries and explanation of the said word in the several decisions of the Supreme Court in no way advance the case of the plaintiff. (Paras 12 and 16)

The tenures under which permission is given to civilians to occupy government land in the cantonment for construction of bungalows on the condition of a right of resumption, if required, is known as old grant tenures. It is governed by regulation contained in Order 179 of 1836 which is self-contained and provides for the manner of grant and resumption of land in cantonment area. In respect of old grant tenure, the Government retains the right of resumption. The GLR in unequivocal terms describes the nature of holder's right as "old grant". Thus, the plaintiff has not been able to establish his title over the suit land and, therefore, the plaintiff deserves to be non-suited on this ground alone. (Para 17). *Union of India* v. *Robert Zomawia Street*, (2014) 6 SCC 707: (2014) 3 SCC

(Civ) 633: AIR 2014 SC 2721: (2014) 104 ALR 734: (2014) 138 AIC 129.

Bench Strength **2**. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 27-3-2014]

Bhudan Singh v. Nabi Bux, (1969) 2 SCC 481; State of U.P. v. Sarjoo Devi, (1977) 4 SCC 2; State of A.P. v. Mohd. Ashrafuddin, (1982) 2 SCC 1; Hari Ram v. Babu Gokul Prasad, 1991 Supp (2) SCC 608; A.G. Varadarajulu v. State of T.N., (1998) 4 SCC 231, clarified and distinguished on facts

Black's Law Dictionary (8th Edn.); The Random House Dictionary of the English Language; Webster's New Twentieth Century Dictionary (2nd Edn.); Oxford English Dictionary, cited

6. PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

[565]— Ss. 2(e) and 1(3) — "Premises belonging to" any government/public entity mentioned in S. 2(e) — "Belonging" — Meaning of — Taking over of ownership and not merely management — Necessity of — Held, "premises belonging to" government/public entity mean only premises owned by or taken on lease by such entity — Taking over of management of an entity by government/public entity, without taking over its ownership, is not enough — *In present case, 1971 Act became applicable to premises concerned of erstwhile private insurance companies only from 1-1-1974 vide 1972 Act when ownership of said companies was taken over by Government, and not when Government took over their management in 1971 — General Insurance Business (Nationalisation) Act, 1972, S. 16 — Words and Phrases — "Belong", "belonging", "own", "ownership" and "management" — General Insurance (Emergency Provisions) Act, 1971. Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406; Banatwala and Co. v. LIC, (2011) 13 SCC 446: (2012) 3 SCC (Civ) 587; Jain Ink Mfg. Co. v. LIC, (1980) 4 SCC 435, clarified

M. Mohammed v. Union of India, AIR 1982 Bom 443, distinguished on facts

Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2010) 5 Mah LJ 744: (2010) 4 Bom CR 279, reversed

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447, distinguished

Halsbury's Laws of England, 4th Edn., Vol. 44, paras 921, 922, 925 and 926; Southerland on Statutory Construction (3rd Edn.) Vol. I, cited

[566]— Ss. 2(e), 2(g), 4 and 5 — Eviction from premises of nationalised insurance company — Protection of vested right of occupation acquired under State Rent Act prior to 1971 Act becoming applicable to premises concerned — *Appellant occupant acquiring "deemed tenant" status (from 1-2-1973) under Bombay Rent Act, 1947 prior to premises of erstwhile insurance company coming to "belong to" Government — Management of erstwhile private insurance company (original lessor) taken over by Central Government in 1971 but "ownership" taken over only in 1974 — Effect — The term "belonging to" as occurring in the definition of "public premises" in S. 2(e) will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the government company at the relevant time — Hence, appellant's right granted by the State enactment cannot be destroyed by giving any retrospective application to provisions of Public Premises Act — Appellant not in "unauthorised occupation" — The premises would not come within the ambit of 1971 Act, until they "belonged" to government/public entity i.e. until 1-1-1974 in present case — Remedy is to resort to procedure available under Bombay Rent Act or its successor Maharashtra Rent Control Act, and not by resorting to provisions of Public Premises Act — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 15-A — Maharashtra Rent Control Act, 1999 (18 of 2000), S. 7(15)(a)(ii) — General Insurance Business (Nationalisation) Act, 1972, S. 16 — General Insurance (Emergency Provisions) Act, 1971*

For any premises to become public premises, the relevant date will be 16-9-1958 or whichever is the later date on which the premises concerned become the public premises as belonging to or taken on lease by LIC or the nationalised banks or the general insurance companies concerned like the first respondent. All those persons falling within the definition of a tenant occupying the premises prior thereto will not come under the ambit of the Public Premises Act and cannot therefore, be said to be persons in "unauthorised occupation". Whatever rights such prior tenants, members of their families or heirs of such tenants or deemed tenants or all of those who fall within the definition of a tenant under the Bombay Rent Act have, are continued under the Maharashtra Rent Control Act, 1999. If possession of their premises is required, that will have to be resorted to by taking steps under the Bombay Rent Act or the Maharashtra Rent Control Act, 1999. If person concerned has come in occupation subsequent to such date, then of course the Public Premises Act, 1971 will apply. (Para 59)

It is true that Section 15 of the Public Premises Act creates a bar of jurisdiction to entertain suits or proceedings in respect of eviction of any person in an unauthorised occupation. However, as far as the relationship between Respondent 1, the other general insurance companies, LIC, nationalised banks and such other government companies or corporations, on the one hand and their occupants/ licensees/tenants on the other hand is concerned, such persons who are in occupation prior to the premises belonging to or taken on lease by such entities, will continue to be governed by the State Rent Control Act for all purposes. The Public Premises Act will apply only to those who come in such occupation after such date. (Para 60)

Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the 1971 Act itself. Firstly, those who are in occupation since prior to 16-9-1958 i.e. prior to the Act becoming applicable, are clearly outside the coverage of the 1971 Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premises concerned belonging to a government corporation or a company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs, etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings. (Para 64)

The relationship between the erstwhile Indian Mercantile Insurance Company (IMIC) as the landlord and the appellant as the occupant, at all material times was governed under the Bombay Rent Act, 1947. The legislature of Maharashtra thought it necessary to protect the licensees also in certain situations. Therefore, the 1947 Act was amended, and Section 15-A was inserted to protect the licensees like the appellant who were in occupation on 1-2-1973. (Para 11)

Sometime around 1970-1971, it was felt that the general insurance industry was also in need of nationalisation. Therefore, first the General Insurance (Emergency Provisions) Act, 1971 was passed by Parliament which was deemed to have come into force on 13-5-1971 from which date the Central Government assumed the management of general insurance business as an initial step towards the nationalisation. Thereafter, the General Insurance Business (Nationalisation) Act, 1972 was passed on 20-9-1972. Section 16 of the 1972 Act effected the merger of the private insurance companies including the lessor IMIC into certain insurance companies which are fully owned subsidiaries of General Insurance Corporation of India which is a government company registered under the Companies Act, 1956, and incorporated as mandated under Section 9 of the abovereferred Nationalisation Act. IMIC merged into the first respondent Oriental Insurance Company Ltd. w.e.f. 1-1-1974. (Paras 12 and 13)

The Public Premises Act, 1971 vide Section 1(3) thereof was deemed to have come into force on 16-9-1958. As provided under Section 2(*e*)(2)(*i*) of the 1971 Act, the definition of "public premises", amongst others, covers the premises belonging to or taken on lease by or on behalf of any company in which not less than fifty-one per cent of the paid-up share capital was held by the Central Government. The consequence of this development was that in view of the merger of IMIC into the first respondent, (of which not less than 51% shareholding was that of the Central Government) the Public Premises Act became applicable to its premises. (Paras 14 to 16)

The result of a conjoint reading of Section 1(3) and Section 2(*e*) of the 1971 Act defining public premises is that although the provisions with respect to eviction under the 1971 Act are deemed to have come into force from 16-9-1958, they will apply to the premises concerned only from the date when they become public premises. Thus, in the case of a company under the Companies Act, 1956 as in the present case, it is necessary that the premises must belong to or must be taken on lease by a company which has not less than 51% paid-up share capital held by the Central Government. (Paras 34 and 35)

In the present case only the management of IMIC was taken over by the Central Government w.e.f. 13-5-1971, and it was entrusted with the Custodian appointed by the Central Government. It

would definitely entail a right in the Custodian to take necessary steps to safeguard the property of IMIC. But it was a transitory arrangement. The properties of IMICs did not belong to the government companies or the Government at that stage. (Paras 38 to 42)

The term "belonging to" as occurring in the definition of "public premises" in Section 2(*e*) of the 1971 Act will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the government company at the relevant time. In the facts of this case the appellant had the status of a deemed tenant under Section 15-A of the Bombay Rent Act, 1947 prior to the premises concerned coming "to belong to a government company" and becoming public premises. If at all he had to be evicted, it was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act. (Para 43)

If there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective. A legislation is not to be given a retrospective effect unless specifically provided for, and not beyond the period that is provided therein. In the absence of anything in the enactment to show that it is to be retrospective, it cannot be so construed, as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. It is very clear the appellant's status as a deemed tenant was accepted under the State enactment [under Section 15-A of the 1947 Act and then continued under Section 7(15)(*a*)(*ii*) of the 1999 Act], and therefore he could not be said to be in "unauthorised occupation". His right granted by the State enactment cannot be destroyed by giving any retrospective application to the provisions of the Public Premises Act, 1971 since there is no such express provision in the statute, nor is it warranted by any implication. In fact his premises would not come within the ambit of the Public Premises Act, 1971, until they belonged to Respondent 1 i.e. until 1-1-1974. The corollary is that if Respondent 1 wanted to evict the appellant, the remedy was to resort to the procedure available under the Bombay Rent Act, 1947 or its successor Maharashtra Rent Control Act, 1999 by approaching the forum thereunder, and not by resorting to the provisions of the Public Premises Act, 1971. (Paras 45, 54 and 70). *Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406; Banatwala and Co. v. LIC, (2011) 13 SCC 446: (2012) 3 SCC (Civ) 587; Jain Ink Mfg. Co. v. LIC, (1980) 4 SCC 435, clarified

M. Mohammed v. Union of India, AIR 1982 Bom 443, distinguished on facts

Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2010) 5 Mah LJ 744: (2010) 4 Bom CR 279, reversed

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447, distinguished

Halsbury's Laws of England, 4th Edn., Vol. 44, paras 921, 922, 925 and 926; Southerland on Statutory Construction (3rd Edn.) Vol. I, cited

[567]— Ss. 3-A to 5 — Unauthorised occupant of premises of nationalised Bank — Order of eviction under 1971 Act — Interference with, for non-compliance by appellant Bank with non-statutory guidelines/executive instructions — Impermissibility of — Estate Officer's order of eviction, restored — *Held, enforcement of any right or exercise of any power by appellant, under Public Premises Act cannot be set at naught by relying upon or referring to guidelines issued by Central Government — As guidelines were not issued in exercise of any statutory power under Public Premises Act/any other statute, even if there was violation or non-compliance with aforesaid guidelines by appellant, relief to appellant could not be denied by relying upon guidelines — To do so would amount to reading guidelines into the statute, which is impermissible — An unauthorised occupant/tenant against whom action is initiated under Public Premises Act, cannot resist proceedings on ground of non-compliance with said guidelines — Only "remedy" is to bring such violation to notice of a higher authority — High Court's order setting aside order of eviction solely on ground that appellant Bank had not reviewed pending case as per Para (v) of guidelines, not sustainable, hence, set aside — Clarified, order should not be construed as laying down a proposition that public sector undertakings and financial institutions to whom guidelines were addressed, could wilfully ignore or violate them — Whenever any action is proposed to be taken under Public Premises Act, authorities concerned are bound to keep said guidelines in view, to extent possible — Time granted to respondents to vacate premises*

subject to filing of usual undertaking in Court. Syndicate Bank v. *Ramachandran Pillai*, (2011) 15 SCC 398: (2014) 2 SCC (Civ) 596.

Bench Strength **2**. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-1-2011]

— Ss. 3-A to 8 — Exercise of powers under — Not to be exercised arbitrarily *See* ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— S. 15 *See also* STATUTE LAW — 'Retrospective/Retroactive Operation/Retrospectivity', (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

[568]— Ss. 15, 1(3), 2(e) & (g) — Reiterated, following *Ashoka Mktg.*, (1990) 4 SCC 406, 1971 Act overrides State Rent Acts in relation to premises which fall within the ambit of both the 1971 Act and State Rent Act concerned, but clarified however 1971 Act has no retrospective application — *Application of Public Premises Act will be only from 16-9-1958, or from such later date when premises concerned become public premises or the landlord concerned becomes a government company or public corporation (see in detail Shortnotes A and B) — Reference to larger Bench, declined — Clarified also that* Ashoka Mktg. case *covers both contractual and statutory tenancies and they will be covered under Public Premises Act for the subjects specified therein — Constitution of India, Arts. 254 and 141. Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406, clarified and followed

Pradip Chandra Parija v. Pramod Chandra Patnaik, (2002) 1 SCC 1; Sundarjas Kanyalal Bhatija v. Collector, (1989) 3 SCC 396, distinguished on facts

[569]— Ss. 15, 2(e) & (g) and 1(3) — Date from which 1971 Act has overriding effect, including over State Rent Act — Retrospective effect, if any of 1971 Act — "Unauthorised occupation" of public premises — What is — Protection of vested rights acquired under State Rent Act prior to 1971 Act becoming applicable to premises concerned — *Held, 1971 Act only has prospective effect — Date from which 1971 Act has overriding effect is to be determined with (i) reference to date on which person in question came into occupation of the premises (occupation date), and (ii) whether on such occupation date premises in question were "public premises" to which 1971 Act applies — 1971 Act is applicable only prospectively, to premises which: (a) were "public premises" on 16-9-1958, from that date (*Date 1*), or, (b) become "public premises" after 16-9-1958 from the date of vesting of the premises in any government/public entity mentioned in S. 2(e) or date when the owner/lessor of the premises becomes a government/public entity under S. 2(e) (*Date 2*) — Thus, 1971 Act would only have overriding effect in respect of persons who enter into occupation after* Date 1 *or* Date 2, *as the case may be — 1971 Act has no retrospective effect and will not apply to persons who had entered into occupation prior to* Date 1 *or* Date 2, *as the case may be, and who had acquired vested rights of occupation — Occupation of such latter persons with vested rights of occupation would not fall within "unauthorised occupation" under S. 2(g), and thus, relationship of such occupants and owner of premises/lessor would continue to be governed by State Rent Act if applicable, and any proceedings under 1971 Act in respect of such occupants shall be void and illegal, as in present case — Eviction of person with such protected vested right of occupation under State Rent Act could only be proceeded with under State Rent Act and not 1971 Act — Words and Phrases — "Unauthorised occupation". Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

Ashoka Mktg. Ltd. v. Punjab National Bank, (1990) 4 SCC 406; Banatwala and Co. v. LIC, (2011) 13 SCC 446: (2012) 3 SCC (Civ) 587; Jain Ink Mfg. Co. v. LIC, (1980) 4 SCC 435, clarified

M. Mohammed v. Union of India, AIR 1982 Bom 443, distinguished on facts

Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2010) 5 Mah LJ 744: (2010) 4 Bom CR 279, reversed

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447, distinguished

Halsbury's Laws of England, 4th Edn., Vol. 44, paras 921, 922, 925 and 926; Southerland on Statutory Construction (3rd Edn.) Vol. I, cited

7. PUBLIC PREMISES GUIDELINES RE PUBLIC SECTOR UNDERTAKINGS/FINANCIAL INSTITUTIONS

See 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 3-A to 5, (2011) 15 SCC 398: (2014) 2 SCC (Civ) 596

8. PUBLIC PREMISES/PUBLIC PREMISES EVICTION

— Applicability of State Rent Act *See* RENT CONTROL AND EVICTION — 'Public premises' — Eviction, (2014) 13 SCC 291: (2014) 5 SCC (Civ) 712

— **Resolution No. 21013/1/2000-Pol. 1, dt. 30-5-2002, published in the Gazette of India, Pt. I, S. 1 dt. 8-6-2002** *See* ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

9. SANCTION FOR TRANSFER OF LAND/CHANGE IN LAND USE

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GUJARAT TOWN PLANNING AND URBAN DEVELOPMENT RULES, 1979

See LOCAL GOVERNMENT — 'Town Planning'

HARYANA APARTMENT OWNERSHIP ACT, 1983 (10 OF 1983)

See LOCAL GOVERNMENT — 'Town Planning'

HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS ACT, 1975 (8 OF 1975)

See LOCAL GOVERNMENT — 'Town Planning'

HARYANA DEVELOPMENT AND REGULATION OF URBAN AREAS RULES, 1976

See LOCAL GOVERNMENT — 'Town Planning'

HARYANA URBAN (CONTROL OF RENT AND EVICTION) ACT, 1973 (11 OF 1973)

See RENT CONTROL AND EVICTION

HEALTH AND HEALTH CARE, RIGHT TO

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered

HERITABILITY/SUCCESSION

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See FAMILY AND PERSONAL LAWS — 'Hindu Law'

HINDU SUCCESSION ACT, 1956

See FAMILY AND PERSONAL LAWS — 'Hindu Law'

HIRE-PURCHASE/NON-SCHEDULED BANKS/ NBFCS/CHIT FUNDS/SAVING SCHEMES/ FINANCIAL LEASING

See DEBT, FINANCIAL AND MONETARY LAWS

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HOSPITAL/RIGHT TO RUN CLINIC/NURSING HOME/LAND USE

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Eligibility and Right to Practise Medicine Operate/Run Clinics/Nursing Homes/Hospitals, etc.'

HOSPITALS, ETC./ELIGIBILITY AND RIGHT TO PRACTISE MEDICINE OPERATE/RUN CLINICS/NURSING HOMES

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH

HOUSES/ALLOTMENT/AUCTION OF FLATS/PLOTS/SHOPS BY HOUSING BOARD/DEVELOPMENT AUTHORITY

See LOCAL GOVERNMENT — 'Town Planning'

HOUSING

See CONSUMER PROTECTION — 'Services'

HOUSING BOARD/DEVELOPMENT AUTHORITY

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

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1. COLONISATION/NEW COLONIES/MULTISTOREYED BUILDINGS

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

[570]— Common areas and facilities — Instances — Stilt parking area, held, covered — *Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f) — Easements Act, 1882, Ss. 7, 13 and 55*

Common passages, staircases, lifts, etc. are the examples of such common areas and facilities. Likewise, stilt parking area may be treated as part of common areas and facilities, in certain circumstances. *DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

[571]— Community and commercial facilities — Allotted land for construction of these facilities — Ownership of such land under State Act concerned, held, continues with coloniser/developer, unless the coloniser itself volunteers to transfer land, free of cost, to the Government — *Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv) — Haryana Development and Regulation of Urban Areas Rules, 1976, R. 11(1)(e). DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

[572]— Community and commercial facilities — Cost of providing these facilities — Prohibition on coloniser from recovering cost from apartment owners under statute concerned — Execution of agreement to this effect under statute concerned — *Held, as per statute concerned agreement has to be entered into by coloniser with competent authority (Director, Town and Country Planning, Haryana in present case) whereby coloniser is prohibited by law from recovering cost of providing "community and commercial facilities" like schools, hospitals, community centres, shops, etc. from apartment owners — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv) — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) and (h) r/w Form LC-IV-A, Cls. 1(c) and 1(e). DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

[573]— Community and commercial facilities — Obligation to provide and bear cost for under statute concerned — *Held, under S. 3(3)(a)(iv) of Haryana Development and Regulation of Urban Areas Act, 1975, obligation to construct "at its own cost", community facilities like schools, hospitals, community centres, shops, etc., on lands allocated for this purpose in colony, is on coloniser/developer — No such obligation is however, cast on coloniser under Haryana Apartment Ownership Act, 1983 or Rules framed thereunder — Further held, if allocated land for providing these facilities is transferred by coloniser, free of cost, to Government, then cost of construction is borne either by Government or by transferee of Government — In no case, however, as per the statutory scheme can this cost be passed on to or recovered from*

plot-holders/apartment owners in colony — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv) — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) and (h) r/w Form LC-IV-A, Cls. 1(c) and 1(e). DLF Ltd. v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

— Community and commercial facilities in addition to common areas and facilities — Statutorily provided by coloniser for entire colony *See* 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

See also LOCAL GOVERNMENT — 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Ss. 3(i) and 3(f) and Ss. 11 to 13, (2014) 12 SCC 231

— Community and commercial facilities in addition to common areas and facilities — Statutorily provided by coloniser for entire colony — Nature of *See* PROPERTY LAW — 'Easements Act, 1882', Ss. 7, 13 and 55, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities in addition to common areas and facilities — Statutorily provided by coloniser for entire colony — Placement/position in colony according to layout plans of colony — Mere placement of some "community and commercial facilities" in gated sub-colony/group housing area/complex, held, will not confer rights on flat/apartment owners in that gated area to claim ownership of these facilities as being part of "common areas" *See* LOCAL GOVERNMENT — 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities in addition to common areas and facilities — Statutorily provided by coloniser for entire colony — Rights of flat/apartment owners of colony — Nature of *See* LOCAL GOVERNMENT — 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

[574]— **Development works — Internal/external development works — Executor of works and burden of cost thereof** — *Held, as per the statute concerned internal development works are executed by coloniser/developer while external development works are executed exclusively by State Government — Cost of both internal/external development works is invariably passed on to plot-holders/apartment owners in the colony on pro rata basis — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), Ss. 2(e), 2(i), 2(g) and 3(3)(a)(ii) — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 11(1)(b) and (c)* (Paras 31 and 32). *DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, explained

2. COOPERATIVE HOUSING

See CIVIL PROCEDURE CODE, 1908, Or. 8 R. 9, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 118, 54 and 122, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

3. DEFICIENCY IN SERVICE

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4. DELAY IN DELIVERY OF POSSESSION

— Builder/Developer's obligation thereafter *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 55(1)(f) and 108(b), (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

5. LETTER OF INTENT

— Non-compliance with terms and conditions — Effect *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

6. REFUND OF CONTRACTUAL PRICE/DEPOSIT/EARNEST MONEY

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7. REGISTRATION OF SALE AGREEMENT

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— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776

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1. BEIJING DECLARATION AND PLATFORM FOR ACTION, 1995

See (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

2. DISPLACED PERSONS AND REFUGEES

Evacuee Interest (Separation) Rules, 1951

[575]— **R. 11-B(2)(ii) — Offer of sale of non-evacuee share to allottees/non-evacuee co-sharers — When valid — Waiver of right by allottees/non-evacuee co-sharers to purchase non-evacuee share — Inference of** — *Auction sale of non-evacuee share in the property — Appellants in the capacity of allottees or non-evacuee co-sharers declined offer to purchase non-evacuee share — Competent authority thereupon directed sale of property through open auction — On receipt of valuation report in respect of property, competent authority published a notice fixing date of auction sale — Appellants then filed application before competent authority for transfer of property in their favour being allottees of adjoining shops — Application accepted by competent authority rejecting objection of respondent Gandhi Cloth Market Association — Custodian, Evacuee Property filed an appeal which Appellate Authority allowed and directed sale of the property through open auction — Writ petition filed by appellants thereagainst dismissed by High Court — Appellants contending that under R. 11-B an offer to purchase non-evacuee share could be made only after receipt of valuation report but in this case offer of purchase having not been made by competent authority after receipt of the valuation report, auction sale was invalid — Held, assuming contention to be correct, yet appellants having consciously waived their right to purchase property when offer was given to them, High Court was justified in declining to exercise its equitable jurisdiction in their favour — Constitution of India, Art. 226. Om Prakash* v. *Appellate Officer*, (2013) 14 SCC 590: (2014) 2 SCC (Civ) 801.

Bench Strength **2**. Coram: *V.N. Khare* and *R.C. Lahoti*, JJ. [Date of decision: 13-12-2001]

3. FREEDOM OF CONSCIENCE

See also INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS — 'Information Technology Act, 2000', S. 66-A, (2013) 12 SCC 73: (2014) 1 SCC (Civ) 283

— Equal entitlement to freedom of conscience — Fundamental right to — Freedom of conscience and religion — Religious values versus personal choices — Impact of religion on decisions of human beings *See* CONSTITUTION OF INDIA — 'Article 14' — Article 14 and other Articles, Arts. 14, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

4. FREEDOM OF RELIGION

See CONSTITUTION OF INDIA, Art. 26(d), (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

5. GENDER FREEDOM AND EQUALITY

See also FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Domestic violence *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Issues as to — Construction of relevant law — Duty of court — Duty to supply omissions, correct uncertainties, and harmonise results with justice through method of free decision *See* (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51

6. HOMOSEXUALS/GAYS/LESBIANS/LGBT COMMUNITY/LGBT RIGHTS

— Rights of *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

7. HUMAN RIGHTS/RIGHTS OF MAN

— Primacy of, under Constitution of India *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Violation of, by issuance of fatwas concerning rights of individual Muslims without their asking for it *See* FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

8. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 (ICCPR)

— Art. 23(2) — Right to marry and to found a family *See* CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

9. MAHARASHTRA PROJECT AFFECTED PERSONS REHABILITATION ACT, 1999 (11 OF 2001)

See CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts — Government contracts, Principles for, Arts. 14, 300-A and 299, (2014) 13 SCC 341: (2014) 5 SCC (Civ) 718

10. RIGHT TO ADOPT

See CONSTITUTION OF INDIA, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

11. RIGHT TO FREEDOM OF SEXUAL ORIENTATION

See (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

12. RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

See INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS — 'Information Technology Act, 2000', S. 66-A, (2013) 12 SCC 73: (2014) 1 SCC (Civ) 283

13. RIGHT TO INFORMATION ACT, 2005

[576]— Preamble and Statement of Objects and Reasons and S. 8 — Purpose, scheme and scope — Limits on right to information — Explained

— To provide free access to information with object of making governance more transparent and accountable — Right to information not an uncontrolled right but subject to dual check viz. inbuilt restrictions within statute itself, and secondly constitutional limitations enshrined in Art. 21 of Constitution i.e. it has to be balanced with right to privacy — Further held, where public authority takes recourse to provisions of exemption or infringement of Art. 21 of the Constitution and withholds information sought, it has to apply its mind and form objective opinion justifying the exemption — Constitution of India, Art. 21

The Scheme of the RTI Act, 2005 contemplates for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. It was aimed at providing free access to information with the object of making governance more transparent and accountable. However, right to information has to be balanced with right to privacy as enshrined under Article 21 of the Constitution. (Para 10)

Whereas Section 3 of the RTI Act grants right to citizens to have access to information, Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed information. Once an application seeking information is made, the same has to be dealt with as per Sections 6 and 7 of the RTI Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the RTI Act. Section 8 is one of the most important provisions of the RTI Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the State Public Service Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section. (Para 11)

Thus, right to information is subject to dual check viz. firstly to the restrictions inbuilt within the RTI Act, and secondly, the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case. (Para 12). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength 2. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

[577]— Ss. 2(f), 2(j), 8 and 11 — Right to information — "Information" and "right to information" — Nature, scope and meanings of

— Held, "information" as envisaged under S. 2(f) means any material in any form including papers, samples, data material held in electronic form, etc. while right to information under S. 2(j) means the "right to information" accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. — Further held, right sought to be exercised and information sought should fall within the scope of "information" and "right to information" as defined under the RTI Act — Where information called for falls within any of the categories specified under S. 8 or relates to organisation to which Act does not apply, public authority may decline to furnish such information — Furthermore, where information relates to third-party information, Information Commission is required to follow procedure prescribed under S. 11

"Information" as envisaged under Section 2(*f*) mean any material in any form including papers, samples, data material held in electronic form, etc. Right to information under Section 2(*j*) means the "right to information" accessible under this Act which is held by or under the control of any public authority and includes the right to inspection of work, documents, records, taking notes, extracts, taking certified sample of materials, obtaining information in the form of diskettes, floppies and video cassettes, etc. The right sought to be exercised and information asked for should fall within the scope of "information" and "right to information" as defined under the RTI Act. If the information called for falls in any of the categories specified under Section 8 or relates to the organisations to which the RTI Act itself does not apply in terms of Section 24 of the RTI Act, the public authority can take such stand before the Information Commission and decline to furnish such information. Another aspect of exercise of this right is that where the information asked for relates to third-party information, the Information Commission is required to follow the procedure prescribed under Section 11 of the RTI Act. (Paras 14 and 15). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2**. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

Namit Sharma v. Union of India, (2013) 1 SCC 745: (2013) 1 SCC (Civ) 786: (2013) 1 SCC (Cri) 737: (2013) 1 SCC (L&S) 244, followed

[578]— S. 2(h)(a) — "Public authority" — Any authority or body or institution which is established or constituted by or under the Constitution — State Public Service Commission established under Art. 315 of the Constitution — Hence held is a "public authority" *— Constitution of India, Art. 315*

As to the question whether the State Public Service Commission is a public authority within the meaning of the RTI Act, the expression "public authority" has been given an exhaustive definition under Section 2(*h*) of the RTI Act as the legislature has used the word "means" which is an expression of wide connotation. Thus, "public authority" is defined as any authority or body or institution of the Government, established or constituted by the Government which falls in any of the stated categories under Section 2(*h*) of the RTI Act. A Public Service Commission is established under Article 315 of the Constitution and hence, is a public authority. (Para 13). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2**. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

— **S. 8** *See* ADMINISTRATIVE LAW — 'Natural Justice' — Bias/Nemo debet esse judex in propria sua causa — Generally — Meaning, Nature, Applicability and Scope, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

[579]— S. 8(1)(e) — Exemption from furnishing information where information is available to a person in his fiduciary relationship — Extent of *— Held, all information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship in mind — On facts held, the examining body (the State Public Service Commission) had no fiduciary relationship with examiners (interviewers) or candidate interviewed, and hence, exemption as contemplated under S. 8(1)(e) cannot be claimed — Question of directing disclosures of names/addresses of members of Interview Board for a larger public interest, therefore, would not arise — Further held, "interviewers" hold position of "agent" vis-à-vis State Public Service Commission which is the "principal"*

The Bihar PSC published an advertisement for filling up the posts of "State Examiner of Questioned Documents", in Police Laboratory in Crime Investigation Department, Government of Bihar,

Patna. The advertisement, inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the State Public Service Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of viva voce test alone. The State Public Service Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

Respondent 1 claiming to be a public spirited citizen filed an application before the Commission under the RTI Act, 2005, seeking information in relation to eight queries which pertained to the interview which was held on 30-9-2002 and 1-10-2002 by the State Public Service Commission. These queries, inter alia, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to MSc during the selection process with the signatures of the members/officers and certified copy of the merit list. The State Public Service Commission furnished the information nearly to all the queries of Respondent 1 except the name, designation and addresses of the members of the Interview Board in accordance with the provisions of Section 8(1)(*g*) of the RTI Act.

Respondent 1 challenged the order of the Information Commission by filing a writ petition. The petition was dismissed by the Single Judge of the High Court. The Division Bench allowed the appeal filed thereagainst finding that Section 8(1)(*g*) of the 2005 Act was inapplicable to the instant case inasmuch as it had application in respect of law enforcement agency and for security reasons. Since no such consideration arose with respect to the affairs of the State Public Service Commission and its function was in public domain, reliance on the said provision for denying the information sought for was held not tenable in law. Hence, the instant appeal by the State Public Service Commission.

Allowing the appeal,

Held :

In the instant case, most of the details asked for by the applicant had already been furnished. The dispute between the parties related only to the first query of the applicant, that is, with regard to disclosure of the names and addresses of the members of the Interview Board. Section 8(1)(*e*) of the RTI Act provides an exemption from furnishing of information, if the information available to a person is in his fiduciary relationship unless the competent authority is satisfied that larger public interest warrants the disclosure of such information. The term "fiduciary" refers to a person having a duty to act for the benefit of another, showing good faith and conduct, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term "fiduciary relationship" is used to describe a situation or transaction where one person places complete confidence in another person in regard to his affairs, business or transactions. All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship. On facts held, the examining body (the Public Service Commission) had no fiduciary relationship with examiner (interviewers) or the candidate interviewed, and hence, exemption as contemplated under Section 8(1)(*e*) cannot be claimed. The question of directing disclosure for larger public interest, therefore, would not arise at all. The interviewers hold the position of an "agent" vis-à-vis the examining body which is the "principal". (Paras 21 and 24 to 26). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2**. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, applied

[580]— Ss. 8(1)(e), 19(1) and (3) — Exemption from disclosure of information available to a person in his fiduciary relationship — Information relating to personal particulars of various candidates available with UPSC — *Information relating to (i) number of years of experience in relevant field considered by UPSC for shortlisting candidates for appointment to post of Deputy Director (Ballistics) in Central Forensic Science Laboratory; and (ii) providing photocopies of experience certificates of candidates called for interview — Held, in absence of any finding by CIC or High Court that such disclosure was necessary in larger public interest, CIC committed serious*

illegality by directing UPSC to disclose information sought and High Court erred in approving the same — Instant case is covered by exemption under S. 8(1)(e) (Para 10). *UPSC* v. *Gourhari Kamila*, (2014) 13 SCC 653: (2014) 5 SCC (Civ) 752.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 6-8-2013]

CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, applied

UPSC v. N. Sugathan, ILR (2012) 2 Del 93; UPSC v. Gourhari Kamila, WP (C) No. 3365 of 2011, order dated 19-5-2011 (Del), reversed

[581]— S. 8(1)(g) — Scope — Explained — Exemption from disclosure of information — Information pertaining to names, designations and addresses of members of Interview Board in recruitment process for public employment — *Held, no obligation is cast upon public authority to furnish information, disclosure of which would endanger life and physical safety of any person — Expression "life" should be construed liberally while "physical safety" is a restricted term — On facts held, in the event names, addresses or individual marks given by members of Interview Board are directed to be declared, their lives or physical safety would be endangered, and it would also hamper effective performance of their duties — Moreover, it would serve no fruitful, much less public purpose — Transparency in such cases is relatable to process where selection is based on collective wisdom and collective markings — Disclosure of names is irrelevant to concept of transparency or for proper exercise of right to information within the limitation of 2005 Act — Impugned judgment directing State Public Service Commission to disclose names of members of Interview Board, held, unsustainable — Constitution of India, Art. 21 — Words and Phrases — "Life" and "public safety"*

The Bihar PSC published an advertisement for filling up the posts of "State Examiner of Questioned Documents", in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement, inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the State Public Service Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of viva voce test alone. The State Public Service Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

Respondent 1 claiming to be a public spirited citizen filed an application before the Commission under the RTI Act, 2005, seeking information in relation to eight queries which pertained to the interview which was held on 30-9-2002 and 1-10-2002 by the State Public Service Commission. These queries, inter alia, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to MSc during the selection process with the signatures of the members/officers and certified copy of the merit list. The State Public Service Commission furnished the information nearly to all the queries of Respondent 1 except the name, designation and addresses of the members of the Interview Board in accordance with the provisions of Section 8(1)(*g*) of the RTI Act.

Respondent 1 challenged the order of the Information Commission by filing a writ petition. The petition was dismissed by the Single Judge of the High Court. The Division Bench allowed the appeal filed thereagainst finding that Section 8(1)(*g*) of the 2005 Act was inapplicable to the instant case inasmuch as it had application in respect of law enforcement agency and for security reasons. Since no such consideration arose with respect to the affairs of the State Public Service Commission and its function was in public domain, reliance on the said provision for denying the information sought for was held not tenable in law. Hence, the instant appeal by the State Public Service Commission.

Allowing the appeal,

Held :

The Scheme of the RTI Act, 2005 contemplates for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. It was aimed at providing free access to information with the object of making governance more transparent and accountable. However, right to information has to be balanced with right to privacy as enshrined under Article 21 of the Constitution. (Para 10)

Whereas Section 3 of the RTI Act grants right to citizens to have access to information, Section 4 places an obligation upon the public authorities to maintain records and provide the prescribed infor-

mation. Once an application seeking information is made, the same has to be dealt with as per Sections 6 and 7 of the RTI Act. The request for information is to be disposed of within the time postulated under the provisions of Section 7 of the RTI Act. Section 8 is one of the most important provisions of the RTI Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption, the State Public Service Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section. (Para 11)

Thus, right to information is subject to dual check viz. firstly to the restrictions inbuilt within the RTI Act, and secondly, the constitutional limitations emerging from Article 21 of the Constitution. Thus, wherever in response to an application for disclosure of information, the public authority takes shelter under the provisions relating to exemption, non-applicability or infringement of Article 21 of the Constitution, the State Information Commission has to apply its mind and form an opinion objectively if the exemption claimed for was sustainable on facts of the case. (Para 12)

Section 8(1)(*g*) is concerned with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (*a*) the life, (*b*) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression "life" has to be construed liberally. "Physical safety" is a restricted term while "life" is a term of wide connotation. "Life" includes reputation of an individual as well as the right to live with freedom. The expression "life" also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression "life" under Section 8(1)(*g*) of the RTI Act, thus, has to be understood in somewhat similar dimensions. The term "endanger" or "endangerment" means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense. of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the authority concerned there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(*g*) of the RTI Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression "for law enforcement or security purposes" is to be read ejusdem generis only to the expression "assistance given in confidence" and not to any other clause of the section. On the plain reading of Section 8(1)(*g*), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression "assistance given in confidence for law enforcement or security purposes". Neither the language of the section nor the object of the section requires such interpretation. (Para 27)

Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the Interview Board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Hence, direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(*g*) of the RTI Act. (Para 28)

Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallised only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under Query No. 1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required to be disclosed but disclosure of individual names of the interviewers would hardly hold

relevancy either to the concept of transparency or for proper exercise of right to information within limitations of the RTI Act. (Para 29). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2**. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

Namit Sharma v. Union of India, (2013) 1 SCC 745: (2013) 1 SCC (Civ) 786: (2013) 1 SCC (Cri) 737: (2013) 1 SCC (L&S) 244; CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, followed

CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, applied

Blacks Law Dictionary, 8th Edn., relied on

Black's Law Dictionary (8th Edn.), referred to

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2010 Pat 57, affirmed

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2011 Pat 103, reversed

[582]— S. 8(1)(j) — Personal information disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of privacy of individual — Held, can be withheld unless authority concerned is satisfied that larger public interest justifies disclosure of this information — Further held, expression "public interest" must be strictly construed so as to justify denial of statutory exemption — *Moreover, public interest has to be construed while balancing right to privacy and right to information with purpose sought to be achieved and purpose that would be served in larger public interest — Furthermore, satisfaction has to be arrived at by authority objectively and consequences of such disclosure have to be weighed with regard to circumstances of the case — Constitution of India, Art. 21*

The Bihar PSC published an advertisement for filling up the posts of "State Examiner of Questioned Documents", in Police Laboratory in Crime Investigation Department, Government of Bihar, Patna. The advertisement, inter alia, stated that written examination would be held if adequate number of applications were received. As very limited number of applications were received, the State Public Service Commission, in terms of the advertisement, decided against the holding of written examination. It exercised the option to select the candidates for appointment to the said post on the basis of viva voce test alone. The State Public Service Commission completed the process of selection and recommended the panel of selected candidates to the State of Bihar.

Respondent 1 claiming to be a public spirited citizen filed an application before the Commission under the RTI Act, 2005, seeking information in relation to eight queries which pertained to the interview which was held on 30-9-2002 and 1-10-2002 by the State Public Service Commission. These queries, inter alia, related to providing the names, designation and addresses of the subject experts present in the Interview Board, names and addresses of the candidates who appeared, the interview statement with certified photocopies of the marks of all the candidates, criteria for selection of the candidates, tabulated statement containing average marks allotted to the candidates from matriculation to MSc during the selection process with the signatures of the members/officers and certified copy of the merit list. The State Public Service Commission furnished the information nearly to all the queries of Respondent 1 except the name, designation and addresses of the members of the Interview Board in accordance with the provisions of Section 8(1)(*g*) of the RTI Act.

Respondent 1 challenged the order of the Information Commission by filing a writ petition. The petition was dismissed by the Single Judge of the High Court. The Division Bench allowed the appeal filed thereagainst finding that Section 8(1)(*g*) of the 2005 Act was inapplicable to the instant case inasmuch as it had application in respect of law enforcement agency and for security reasons. Since no such consideration arose with respect to the affairs of the State Public Service Commission and its function was in public domain, reliance on the said provision for denying the information sought for was held not tenable in law. Hence, the instant appeal by the State Public Service Commission.

Allowing the appeal,

Held :

Another very significant provision of the RTI Act is Section 8(1)(*j*). In terms of this provision, information which relates to personal information, the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. (Para 21)

The expression "public interest" must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the RTI Act. In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. It also means the general welfare of the public that warrants recognition and protection; something in which the public as a whole has a stake. (Para 22)

Furthermore, the satisfaction has to be arrived at by the authorities objectively and the consequences of such disclosure have to be weighed with regard to the circumstances of a given case. The decision has to be based on objective satisfaction recorded for ensuring that larger public interest outweighs unwarranted invasion of privacy or other factors stated in the provision. It is not a decision simpliciter between private interest and public interest. It is a matter where a constitutional protection is available to a person with regard to the right to privacy. Thus, the public interest has to be construed while keeping in mind the balance factor between right to privacy and right to information with the purpose sought to be achieved and the purpose that would be served in the larger public interest, particularly when both these rights emerge from the constitutional values under the Constitution of India. (Para 23)

Furthermore, the view of the High Court in the judgment under appeal that element of bias can be traced and would be crystallised only if the names and addresses of the examiners/interviewers are furnished is without any substance. The element of bias can hardly be co-related with the disclosure of the names and addresses of the interviewers. Bias is not a ground which can be considered for or against a party making an application to which exemption under Section 8 is pleaded as a defence. The transparency that is expected to be maintained in such process would not take within its ambit the disclosure of the information called for under Query No. 1 of the application. Transparency in such cases is relatable to the process where selection is based on collective wisdom and collective marking. Marks are required to be disclosed but disclosure of individual names of the interviewers would hardly hold relevancy either to the concept of transparency or for proper exercise of right to information within limitations of the RTI Act. (Para 29). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength 2. Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

Blacks Law Dictionary, 8th Edn., relied on

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2010 Pat 57, affirmed

Saiyed Hussain Abbas Rizwi v. State Information Commission, AIR 2011 Pat 103, reversed

[583]— Ss. 8(1)(j) and 11 — Exemption from disclosure — Personal information — Comments or follow-up-action of annual confidential report (ACR) of a public officer sought by a third party — Disclosure of such information to third parties, if permissible — Held, information on ACRs is personal — *Reiterated, except in cases involving overriding public interest, ACR record of a public officer cannot be disclosed to third parties — Held, recordings made in ACR constitute an integral part of ACR which is confidential — Hence, it cannot be disclosed to third parties except in case of larger public interest* (Paras 14 and 19 to 21). *R.K. Jain* v. *Union of India*, (2013) 14 SCC 794: (2014) 3 SCC (Civ) 540: (2013) 291 ELT 3: (2013) 116 Cut LT 465: (2013) 3 LW 899: (2013) 4 ALD 33.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 16-4-2013]

Girish Ramchandra Deshpande v. Central Information Commr., (2013) 1 SCC 212: (2013) 1 SCC (L&S) 150, followed

R.K. Jain v. Union of India, (2012) 188 DLT 794: AIR 2013 Del 24, affirmed

P.K. Sarin v. Directorate General of Works (CPWD), Appeal No. CIC/WB/A/2007/00422, decided on 19-2-2009 (CIC), approved

Centre of Earth Science Studies v. Anson Sebastian, (2010) 2 KLT 233, explained

[584]— Ss. 11 and 8(1)(j) — Third party information — Information treated as confidential by third party — Disclosure thereof — When warranted — Information relating to public servant discharging public duties — Whether invasion of privacy of public servant — *Such information if could be disclosed in public interest — Reiterated, it is prerogative of competent authority to decide if such information could be disclosed or would open gates of privacy of third party — In such circumstances held, mandatory procedure laid down in S. 11 cannot be dispensed with* (Paras 10, 17, 18 and 20)

Dismissing the appeal, the Supreme Court held as above. *R.K. Jain* v. *Union of India*, (2013) 14 SCC 794: (2014) 3 SCC (Civ) 540: (2013) 291 ELT 3: (2013) 116 Cut LT 465: (2013) 3 LW 899: (2013) 4 ALD 33.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 16-4-2013]

Arvind Kejriwal v. Central Public Information Officer, AIR 2010 Del 216, approved

14. RIGHT TO MARRY, RELATIONSHIPS AND SEXUAL FREEDOM

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

See also FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

15. RIGHT TO PRIVACY

See also 'Right to Information Act, 2005', S. 8(1)(j), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— Ss. 8(1)(j) and 11, (2013) 14 SCC 794

— Ss. 11 and 8(1)(j), (2013) 14 SCC 794

See FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **Confidentiality of tax documents** *See* (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

— **Privileged communications** *See* DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

16. RIGHT TO PROPERTY

See LAND ACQUISITION AND REQUISITION — 'Eminent domain', (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

— 'Land Acquisition Act, 1894', Ss. 4 and 6 [as amended by Act of 1984], (2013) 14 SCC 195

— 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Ss. 24(1) & (2), (2014) 3 SCC 183

— Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897, (2014) 3 SCC 183

See also (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

17. UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

— **Art. 16(1)** *See* CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered — Marriage, Relationships and Sexual freedom/Sexual orientation freedom, Art. 21, (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

HUMAN RIGHTS, DOCTRINE OF

See CONSTITUTION OF INDIA — 'Article 21' — Nature and Scope

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See ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function

IMPLIED APPLICABILITY

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See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights'

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INACTION OR GAPS — JUDICIAL LEGISLATION/EXECUTIVE OR LEGISLATIVE ACTIONS

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INACTION OR GAPS — ORDERS/EXECUTIVE OR LEGISLATIVE ACTION/DIRECTIONS REDRESSING/FILLING — JUDICIAL LEGISLATION

See CONSTITUTION OF INDIA — 'Article 32' — Exercise of power under by Supreme Court — Relief

INFORMATION TECHNOLOGY ACT, 2000

See INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS

INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS

1. INFORMATION TECHNOLOGY ACT, 2000

— **S. 4** *See* CIVIL PROCEDURE CODE, 1908, S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[585]— **S. 66-A — Constitutional validity — Offensive message through communication service — What is — Social networking sites — Comments posted thereon — Interim relief pending final adjudication on constitutionality — Advisory dt. 9-1-2003 of Central Government** — *Advisory suggests that arrest ought not be made in a case registered under S. 66-A of IT Act, 2000*

unless such arrest is approved by a senior police officer not below the rank of the Inspector General of Police in the metropolitan cities or of an officer not below the rank of Deputy Commissioner of Police or Superintendent of Police at the district level, as the case may be — Held, this safeguard ought to be followed till matter is finally decided — Constitution of India, Arts. 19(1)(a) & (2), 25 and Preamble (Paras 1 and 2). *Shreya Singhal* v. *Union of India*, (2013) 12 SCC 73: (2014) 2 SCC (L&S) 559: (2013) 4 SCC (Cri) 149: (2014) 1 SCC (Civ) 283.

Bench Strength 2. Coram: *Dr B.S. Chauhan* and *Dipak Misra*, JJ. [Date of decision: 16-5-2013]

[**Ed.**: This short order passed by the Supreme Court on 16-5-2013 hit the headlines in India. Though the detailed facts are not mentioned in the order, yet most netizens in India know the background of this short order. Two young women were arrested for posting their so-called objectionable comments on Facebook. The comments were about the propriety of shutting down Mumbai after the death of a political leader in the State of Maharashtra. By and large, people felt that the comments were the expression of views on social matters rather than any criminal activity. The arrested women were released later on and it was decided to close the criminal cases against them yet the arrests attracted widespread public protest. It was felt that the police has misused its power by invoking Section 66-A of the Information Technology Act, 2000 in this case. The petitioner, a public-spirited person, challenged the constitutional validity of Section 66-A inter alia contending that it violates the freedom of speech and expression. Through this short order, the Supreme Court has given partial relief by directing all the State Governments in India not to make arrests under Section 66-A without the approval of senior police officials. Under the Criminal Procedure Code, 1973, normally a police officer of the rank of Inspector can make an arrest but now after the Supreme Court directions as issued herein, an Inspector cannot do this on his own. He has to obtain prior approval from his seniors. In other words, it is hoped that there would be some check on misuse of Section 66-A.]

2. WEBSITE

— Official website of person — Evidentiary value *See* CIVIL PROCEDURE CODE, 1908, S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

INFRASTRUCTURE PROVIDED BY LOCAL/CIVIL/PUBLIC AMENITIES/ MUNICIPAL AUTHORITIES

See also LOCAL GOVERNMENT — 'Town Planning'

INFRUCTUOUS APPEAL OR PETITION OR ISSUE/FRIVOLOUS LITIGATION

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See CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP

See also PRACTICE AND PROCEDURE

INHERENT POWER

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See also PRACTICE AND PROCEDURE

INJUNCTION/INTERIM/INTERLOCUTORY ORDER/STAY/INTERIM RELIEF

See PRACTICE AND PROCEDURE

INSOLVENCY AND BANKRUPTCY LAWS

— Insolvency — What is *See* INSURANCE — 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771

INSTITUTE OF CARGO CLAUSES

See INSURANCE

INSTITUTIONS UNDER PERSONAL LAWS/CONCILIATION/MEDIATION ESTABLISHMENTS

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Synopsis

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1. ASSIGNMENT/SUBROGATION

See MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 149, 147, 166, 168 and 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

2. CONSTRUCTION OF INSURANCE CONTRACTS/INTERPRETATION OF POLICY

[586]— **Basic rules — Literal or strict construction — Interference by courts — Held, terms of contract have to be construed strictly** — *Insurance agreements have to be read as a whole for harmonious construction of their terms — Courts are not permitted to substitute terms of contract*

under garb of liberal construction — In instant case, insured failed to inform insurer about default committed by buyer as per terms of agreement — Except two claims where statutory compliance was admittedly observed, all 17 claims placed by insured disallowed for non-compliance with terms of the insurance policy — Insurance Act, 1938, S. 46

The insured company purchased a policy for the buyer who committed default in making payments with respect to the consignment. The insured failed to inform the insurer about such default within the stipulated period as per the terms of agreement. The insured later placed 17 claims which were rejected by the insurer on the ground that the insured did not ensure compliance with the terms of the insurance agreement which stipulated period within which the insurer is to be informed about any default by buyer. The terms provided that the insured must make a declaration in the prescribed form (Form 205), on the 15th of every month as regards whether or not, there has been any default committed by the foreign importer, either in part, or in full, for a period exceeding 30 days from the date on which the payment fell due, with respect to the shipments made within the policy period. Non-compliance with the said term(s) of contract will exonerate the insurer of all liability in this regard. The insurer admitted that only two claims deserve to be allowed and contended that the rest be disallowed on the ground of default of non-compliance with the terms of agreement by the insured.

Partly allowing the appeals,

Held :

It is not permissible for the court to substitute the terms of the contract itself, under the garb of construing terms incorporated in the agreement of insurance. No exceptions can be made on the ground of equity. The liberal attitude adopted by the court, by way of which it interferes in the terms of an insurance agreement, is not permitted. The same must certainly not be extended to the extent of substituting words that were never intended to form a part of the agreement. The endeavour of the court should always be to interpret the words used in the contract in the manner that will best express the intention of the parties. (Paras 10 to 13)

The insured cannot claim anything more than what is covered by the insurance policy. The terms of the contract have to be construed strictly, without altering the nature of the contract as the same may affect the interests of the parties adversely. The clauses of an insurance policy have to be read as they are. Consequently, the terms of the insurance policy, that fix the responsibility of the insurance company must also be read strictly. The contract must be read as a whole and every attempt should be made to harmonise the terms thereof, keeping in mind that the rule of *contra proferentem* does not apply in case of commercial contract, for the reason that a clause in a commercial contract is bilateral and has mutually been agreed upon. (Para 11). *Export Credit Guarantee Corpn. of India Ltd.* v. *Garg Sons International*, (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648: (2013) 178 Comp Cas 341: (2013) 116 Cut LT 395: (2013) 97 ALR 195: (2013) 123 AIC 268: (2013) 2 CPJ 1.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *V. Gopala Gowda*, JJ. [Date of decision: 17-1-2013]

Suraj Mal Ram Niwas Oil Mills (P) Ltd. v. United India Insurance Co. Ltd., (2010) 10 SCC 567: (2010) 4 SCC (Civ) 267; Vikram Greentech (I) Ltd. v. New India Assurance Co. Ltd., (2009) 5 SCC 599: (2009) 2 SCC (Civ) 590; Sikka Papers Ltd. v. National Insurance Co. Ltd., (2009) 7 SCC 777: (2009) 3 SCC (Civ) 304; Oriental Insurance Co. Ltd. v. Sony Cheriyan, (1999) 6 SCC 451; Polymat India (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174; Sumitomo Heavy Industries Ltd. v. ONGC Ltd., (2010) 11 SCC 296: (2010) 4 SCC (Civ) 459; Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306, followed

— Contra proferentem — When not applicable

See CONTRACT AND SPECIFIC RELIEF — 'Construction/Interpretation of contract', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

3. GENERAL INSURANCE BUSINESS (NATIONALISATION) ACT, 1972

— S. 16 *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 2(e), 2(g), 4 and 5, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

4. INSTITUTE OF CARGO CLAUSES

— Cls. 4.6 and 5.1 *See* 'Insurer's Liability/ Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

5. INSURANCE ACT, 1938

— S. 46 *See* 'Construction of Insurance Contracts/Interpretation of Policy', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

See also CONTRACT AND SPECIFIC RELIEF — 'Construction/Interpretation of contract', (2014) 1 SCC 686: (2014) 1 SCC (Civ) 648

6. INSURER'S LIABILITY/INSURANCE POLICY

See MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 15, 147 and 149, (2013) 11 SCC 424: (2014) 1 SCC (Civ) 562

— Ss. 166, 146, 147 and 149, (2012) 13 SCC 792: (2014) 5 SCC (Civ) 430

[587]— Insurance policy covered risk of loss due to non-delivery of goods insured — Ship carrying goods insured caught fire in transit — Ship

abandoned by owners as estimate of cost of its repair was much higher than its insured value — Held, "non-delivery" being a specific risk covered by policy, failure to deliver cargo, as agreed, would amount to "non-delivery" of goods — *Exclusion clause, Cl. 4.6 of Institute of Cargo Clauses, which formed part of policy, in respect of "loss, damage or expense arising from insolvency" cannot be invoked by insurer to repudiate its liability — Insolvency or bankruptcy does not depend upon individual opinion or perception but is a matter of authoritative determination under relevant municipal laws — Fact that ship was abandoned by its owners as estimate of repair cost was higher than its insured value, held, cannot have the effect of their being adjudged as insolvents — Further, no question of unseaworthiness of vessel, much less, prior knowledge of insured of such unseaworthiness arose in this case so as to exclude loss and damage suffered by insured from purview of insurance cover as contemplated by Cl. 5.1 of Institute of Cargo Clauses (A), which formed part of insurance agreement — Insurance amount directed to be paid with interest at 18% p.a. — Institute of Cargo Clauses, Cls. 4.6 and 5.1 — Marine Insurance Act, 1963, Ss. 32, 3, 55 and Schedule — Words and Phrases — "Insolvent" and "insolvency". Metal Powder Co. Ltd.* v. *Oriental Insurance Co. Ltd.*, (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339: AIR 2014 SC 1938: (2014) 105 ALR 270: (2014) 138 AIC 76: (2014) 2 Cal LJ 201: (2014) 4 CPJ 9.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *N.V. Ramana*, JJ. [Date of decision: 7-4-2014]

— **Interpretation of** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 147, (2014) 9 SCC 341: (2014) 5 SCC (Civ) 48

7. MARINE INSURANCE ACT, 1963

— **Ss. 32, 3, 55 and Schedule** *See* 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

8. MOTOR INSURANCE

See MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 147, 149, 166, 168 and 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

— Ss. 147 and 149, (2013) 11 SCC 554

— Ss. 166, 168 and 171, (2014) 1 SCC 244

— S. 173, (2013) 12 SCC 84

[588]— **Fundamental breach of policy terms — Vehicle damaged by accident — Vehicle found to have expired temporary registration on date of accident — Repudiation of claim by insurer — State Commission and National Commission upholding decision of insurer, upheld** — *Held, using a motor vehicle on public road without registration is not only an offence punishable under S. 192 of Motor Vehicles Act, 1988 but also fundamental breach of terms and conditions of policy contract — Contention that purpose of temporary/permanent registration is only for purpose of identification of the vehicle for tracing owner of vehicle in case of accident, and since temporary registration number (although it had expired) was still affixed on the vehicle, appellant is entitled to insured amount — Tenability — Held, under S. 39 of 1988 Act, no person shall drive a motor vehicle without valid registration and contravention of the same is punishable under S. 192 of MV Act — Further, temporary registration is valid only for a period not exceeding one month unless extended for unforeseen circumstances beyond control of owner — In instant case, though owner of said vehicle obtained temporary registration, but on date of accident temporary registration had expired and appellant (vehicle owner) had neither applied for extension of temporary registration nor obtained permanent registration — Hence, held, no infirmity in order passed by State Commission and National Commission — Motor Vehicles Act, 1988, Ss. 39, 43 and 192 — Consumer Protection Act, 1986, Ss. 2(1)(o) & (g)* (Paras 11 and 12). *Narinder Singh* v. *New India Assurance Co. Ltd.*, (2014) 9 SCC 324: (2014) 5 SCC (Civ) 43: AIR 2014 SC 3761: (2014) 107 ALR 726: (2014) 4 CPJ 11: (2014) 144 AIC 235: (2014) 3 KLT 1074: (2014) 3 CPR 609.

Bench Strength **2**. Coram: **M. Yusuf Eqbal** and *P.C. Ghose*, JJ. [Date of decision: 4-9-2014]

Narinder Singh v. New India Assurance Co. Ltd., 2013 SCC OnLine NCDRC 354, affirmed

— **Insurer's liability** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 146, 147 and 149, (2012) 13 SCC 792: (2014) 5 SCC (Civ) 430

— **Motor accident — Insurer's liability and defences available** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 149(2) and 170(b), (2013) 12 SCC 202: (2014) 1 SCC (Civ) 300

9. THIRD PARTY LIABILITY

— **Duty of insurer to try and implead insured person and/or adduce sufficient evidence to disown its liability** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 149, 147, 166, 168 and 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

INSURANCE ACT, 1938

See INSURANCE

INSURANCE POLICY/INSURER'S LIABILITY

See INSURANCE

INSURER'S LIABILITY/INSURANCE POLICY

See INSURANCE

INTEGRAL PART OF ART. 14

See CONSTITUTION OF INDIA — 'Article 14' — Procedural Equality — Natural Justice

INTELLECTUAL PROPERTY

1. COPYRIGHT ACT, 1957

[589]— S. 31(1)(b) — Compulsory licence for works withheld from public — Terms and conditions for grant of compulsory licence including compensation payable to copyright holder — Interim stay against method adopted by Copyright Board for compensation payable on revenue-sharing basis — Claim for — *Stay declined by High Court — Supreme Court too refusing to interfere observing that stay was being sought against order of Copyright Board and not for any direction to pay compensation at any particular rate — It would not be proper to express opinion when merits of matter were sub judice in High Court — However request made to High Court to expedite final hearing*

Disposing of the applications for stay,

Held :

Taking into consideration the fact that the subject-matter of challenge in these special leave petitions is an order passed by the High Court refusing to grant interim stay of the order of the Copyright Board and the subject-matter of the appeal pending before the High Court is the method to be adopted for assessing the compensation payable, the Court is of the view that no interference is called for at this stage in these special leave petitions. The Supreme Court had on the earlier occasion set aside the earlier fixation of compensation and the entire matter was at large before the Copyright Board. The relief sought for by the petitioners herein in the application for interim orders before the High Court was only for a stay of the order passed by the Copyright Board and not for any direction to pay compensation at any particular rate. Expressing any opinion in the matter at this stage, would be improper since the aforesaid question is pending decision in the High Court. At the same time, since the matter involves a large number of stakeholders, it will be in the interest of all concerned if the appeals are decided early by the High Court. The High Court is therefore requested to take up these pending appeals on an urgent basis and to ensure that the same are disposed of, if possible, within two months from the date of communication of a copy of this order. (Paras 6 to 8). *Phonographic Performance Ltd.* v. *Entertainment Network (India) Ltd.*, (2011) 15 SCC 425: (2014) 2 SCC (Civ) 608.

Bench Strength 2. Coram: *Altamas Kabir* and *Cyriac Joseph*, JJ. [Date of decision: 5-4-2011]

— Ss. 55, 13 and 2(o) *See* CONSTITUTION OF INDIA, Art. 137, (2014) 7 SCC 662: (2014) 3 SCC (Civ) 797

2. TRADE MARKS

(a) Branded good

See (2013) 12 SCC 468: (2014) 1 SCC (Civ) 701

(b) Connection between business/goods and distinctive mark/brand

— Unpackaged goods sold loose — A question of fact *See* (2013) 12 SCC 468: (2014) 1 SCC (Civ) 701

(c) Trade Marks Act, 1999

— S. 2(3b) *See* (2013) 12 SCC 468: (2014) 1 SCC (Civ) 701

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See CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136

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See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Basic rules

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See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court itself bound

— Supreme Court whether itself bound

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See DEBT, FINANCIAL AND MONETARY LAWS

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See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

INTEREST ON COMPENSATION/ COMPENSATION AS INTEREST

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

INTEREST REIPUBLICAE UT SIT FINIS LITIUM (IT CONCERNS THE STATE THAT THERE BE AN END TO LAW SUITS)

See DOCTRINES AND MAXIMS

INTEREST/RECOVERY OF MONEY PAID/PROFITS EARNED

See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Restitutionary Remedies — Recompense for benefit conferred

INTEREST/RELIEF/COMPENSATION

See CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power

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See CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power

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INTERLOCUTORY ORDERS/INTERIM
See CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966 (ICCPR)
See HUMAN AND CIVIL RIGHTS

INTERPRETATION OF CONTRACT/ CONSTRUCTION
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See GOVERNMENT CONTRACTS/TENDERS

INTERPRETATION OF DEEDS AND DOCUMENTS/CONSTRUCTION
See DEEDS AND DOCUMENTS

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INTERPRETATION OF POLICY/ CONSTRUCTION OF INSURANCE CONTRACTS
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INTERPRETATION OF SUBORDINATE/ DELEGATED LEGISLATION
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ISSUES IN QUESTION NOT DETERMINED
See CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief

J&K REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT, 1968 (15 OF 1968)
See LAND ACQUISITION AND REQUISITION

JOINT AND SEVERAL LIABILITY
See TORT LAW

JOINT FAMILY/JOINT FAMILY PROPERTY/JOINT PROPERTY
See FAMILY AND PERSONAL LAWS — 'Hindu Law'

JOINT OWNERSHIP/CO-OWNER/CO-SHARER
See PROPERTY LAW

JOINT PROPERTY/JOINT FAMILY/JOINT FAMILY PROPERTY
See FAMILY AND PERSONAL LAWS — 'Hindu Law'

JUDGE'S PERCEPTION/BELIEFS AND MORALITY
See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

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— Clarity and certainty in the law *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

— Contingent nature of law and rights — Faith/Belief of people — When relevant *See* CONSTITUTION OF INDIA, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

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— Judicial power — Monopoly of State *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Law — Temporal changeability of law *See* (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

[590]— Object and function of law, stated — Law and Society — Change in law with change in society, emphasised — Role and duty of court, explained — *Held, court's role is to understand the purpose of law in society and to help the law achieve its purpose — Duty to determine proper relationship between subjective and objective purposes of law, indicated*

The law regulates relationships between people. It prescribes patterns of behaviour. It reflects the values of society. The role of the court is to understand the purpose of law in society and to help the law achieve its purpose. But the law of a society is a living organism. It is based on a given factual and social reality that is constantly changing. Sometimes change in law precedes societal change and is even intended to stimulate it. In most cases, however, a change in law is the result of a change in social reality. Indeed, when social reality changes, the law must change too. Just as change in social reality is the law of life, responsiveness to change in social reality is the life of the law. It can be said that the history of law is the history of adapting the law to society's changing needs. In both constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law. (Para 16). *Badshah* v. *Urmila Badshah Godse*, (2014) 1 SCC 188: (2014) 1 SCC (Civ) 51: AIR 2014 SC 869: 2014 Cri LJ 1076: (2013) 6 CTC 86: (2013) 4 KLT 367: (2013) 101 ALR 704: (2013) 132 AIC 108: (2014) 2 LW 936.

Bench Strength 2. Coram: *Ranjana P. Desai* and **A.K. Sikri**, JJ. [Date of decision: 18-10-2013]

— Primacy of Human Rights over any religious doctrine *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Right to be aware of legal duty alleged to be infringed — Scope *See* CONSTITUTION OF INDIA — 'Article 21' — "Procedure established by law" — Justiciability of "procedure established by law" — Generally, Arts. 21, 14 and 20(1), (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

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2. CHANDIGARH (DELEGATION OF POWERS) ACT, 1987

[591]— **S. 3(1) — Delegation of Administrative Power — Extent of delegation permissible** — *Held, S. 3(1) does not empower Administrator to delegate functions of "appropriate Government" to any officer or authority since Presidential notification does not provide for such delegation* (Para 8). *Gurbinder Kaur Brar* v. *Union of India*, (2013) 11 SCC 228: (2014) 1 SCC (Civ) 32: AIR 2013 SC 3028.

Bench Strength 2. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 22-7-2013]

Surinder Singh Brar v. Union of India, (2013) 1 SCC 403: (2013) 1 SCC (Civ) 620, followed

3. DELAY/LACHES/LIMITATION

See also CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Tenancy and land matters, Arts. 226, 300-A and 14, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

[592]— **Inordinate delay in challenging acquisition proceedings** — *Appellant challenging acquisition proceedings after 35 yrs of acquisition of Khasra No. 409 and 20 yrs of acquisition of Khasra No. 410/1 — Held, appellant ought to have been non-suited by High Court on ground of laches alone — Further held, her assertion about lack of knowledge of acquisition proceedings till April 1999 was clearly an afterthought — Constitution of India, Arts. 226 and 300-A* (Para 23). *Santosh Sharma* v. *Union of India*, (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369.

Bench Strength 3. Coram: *G.S. Singhvi*, *V. Gopala Gowda* and *Shiva Kirti Singh*, JJ. [Date of decision: 19-9-2013]

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4. EMINENT DOMAIN

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Bench Strength 2. Coram: *Dr B.S. Chauhan* and *V. Gopala Gowda*, JJ. [Date of decision: 12-2-2013]

Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491, applied

— Consolidation — Nature of — Distinguished from acquisition of land *See* LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40, 45(2)(a), (b), (c), 48-A, 52, 53(a), 67, 77, 80, 81, 82, 84 and 85, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

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— Vesting of right title and interest in land under LA Act, 1894, held, takes place only upon possession being taken by Collector *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

6. J&K REQUISITIONING AND ACQUISITION OF IMMOVABLE PROPERTY ACT, 1968 (15 OF 1968)

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7. LAND ACQUISITION ACT, 1894

— S. 3(b) *See also* S. 18

[594]— Ss. 3(b), 9, 4 and 6 — Acquisition of land — Challenge to — Locus standi — Ownership not retained — *Acquired land standing transferred to third parties who had raised construction thereon and were running factories therefrom at time of filing of petition by appellant — Hence held, appellant had no locus standi to challenge acquisition proceedings* (Paras 1 and 2). *Santosh Sharma* v. *Union of India*, (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369.

Bench Strength **3**. Coram: *G.S. Singhvi*, *V. Gopala Gowda* and *Shiva Kirti Singh*, JJ. [Date of decision: 19-9-2013]

Santosh Sharma v. Union of India, (2003) 71 DRJ 788, affirmed

[595]— Ss. 3(f), 4 and 6 — Public purpose — What is — Land reserved in Development Plan for Agricultural Produce Market Committee (APMC) for "bamboo trade and flea market" — Land acquired for APMC for purpose of extension of market yard, held, valid — Both the purposes were public purposes — *There was no legal or other impediment in APMC regulating a flea market in its market yard — Restrictions on the bamboo trade were also removed on account of vacation of stay granted by the Government — Hence, APMC was and continues to be free to regulate bamboo trade also — No dichotomy between purpose notified and purpose for which reservation was made — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 126 — Words and Phrases — "Public purpose"* (Paras 23 and 24). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

— S. 4 *See* S. 3(b); S. 3(f); S. 5-A; S. 5-A(1); S. 17; S. 23; S. 28; S. 48; S. 48(1)

See also LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40(3)(jj)(a), 12 and 20, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

— Ss. 4, 5, 6, 18 and 23 *See* 'Eminent domain', (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448

[596]— Ss. 4, 5-A and 6 — Quashment of notification issued under S. 6 due to non-compliance with S. 5-A — *Held, S. 4(1) notification would also be deemed to have lapsed with time, as per law laid down in* Padma, *(2002) 3 SCC 533* (Para 24). *Gojer Bros. (P) Ltd.* v. *State of W.B.*, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588: (2014) 102 ALR 473: (2014) 134 AIC 248: (2014) 2 LW 305: (2014) 2 Cal LT 29.

Bench Strength **2**. Coram: **G.S. Singhvi** and *Chockalingam Nagappan*, JJ. [Date of decision: 28-11-2013]

Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, applied

[597]— Ss. 4, 5-A, 6, 9 and 16 — Delayed filing of writ petition challenging the acquisition — Landowners not filing any objections to proposed reservation of their land in revised development plan nor when acquisition proceedings were completed and award published, civil suit filed only after proceedings for taking possession were initiated and a writ petition was only filed six years thereafter challenging such acquisition — Held, High Court rightly refused to interfere with the acquisition — *Landowners concerned were not justified in sitting on the fence and allowing Government to complete the acquisition proceedings on the basis that notifications under S. 4 and declaration under S. 6 were valid i.e. without raising any objections at the pre-publication stage, when notice had been duly given, and then to attack the notification on grounds that were available to them at the time when notifications had been published and the award passed — To succeed in a challenge to the acquisition proceedings interested person must remain vigilant and watchful — If instead, interested persons allow inordinately delay taking action, they cannot invoke their powers of judicial review exercisable under Art. 226 — Failure of the interested persons to seek redress at the appropriate stage and without undue delay would give rise to an inference that they have waived off their objections to the acquisition — Constitution of India, Art. 226 — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 126*

The challenge to the acquisition proceedings was, as seen earlier, negatived by the High Court not only on the ground of unexplained delay and

laches but also on merits. The High Court was perfectly justified in doing so. (Para 16)

The challenge to the acquisition proceedings was indeed highly belated having regard to the fact that the Planning Authority had declared its intention to revise the development plan for Pune City, and invited objections to the proposal as early as in May 1976. The landowners did not file any objections to the proposed reservation of their land in the revised development plan. In April 1984 the Special Officer submitted a revised development Plan under Section 28 of the MRTP Act for approval. The draft plan was sanctioned and published in the Official Gazette on 29-1-1987 in which the land in question continued to be reserved though the designated purpose was shown to be "bamboo trade and flea market". The process for acquisition of the land was then started under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. This declaration was made on 13-11-1987. Not only that, specific notices were sent to the landowners and the developers on different dates of hearing. Despite the publication and the service of notices no objections were filed by the landowners or the developers. In the absence of any objections or opposition to the proposed acquisition the Land Acquisition Officer was free to make an award which he did on 9-11-1989. It was only after the Collector (Land Acquisition) initiated the proceedings for taking over the possession of the land in question that the landowners filed a civil suit in which they challenged the award made by the Collector without raising any question regarding the validity of the declaration made under Section 126(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. That suit remained pending for nearly six years before the same was withdrawn to challenge the acquisition proceedings in the writ petition filed before the High Court. This challenge was on the face of it barred by inordinate delay and laches. The High Court was fully justified in declining to interfere with the acquisition proceedings on that ground. (Paras 17 and 18)

A valid notification under Section 4 is a sine qua non for initiation of proceedings for acquisition of property. The owners were not, therefore, justified in sitting on the fence and allowing the Government to complete the acquisition proceedings on the basis that the notification under Section 4 and declaration under Section 6 were valid and then to attack the notification on grounds that were available to them at the time when the notification was published. In order to succeed in a challenge to the acquisition proceedings the interested person must remain vigilant and watchful. If instead of doing so, the interested person allows grass to grow under his feet, he cannot invoke the powers of judicial review exercisable under Article 226 of the Constitution. The failure of the interested persons to seek redress at the appropriate stage and without undue delay would in such cases give rise to an inference that they have waived of their objections to the acquisitions. The bottom line is that the High Court can legitimately decline to invoke their powers of judicial review to interfere with the acquisition proceedings under Article 226 of the Constitution if the challenge to such proceedings is belated and the explanation offered a mere moonshine as is the position in the case at hand. The High Court has in the fact situation of this case rightly exercised its discretion in refusing to interfere with the acquisition proceedings. (Paras 20 and 22)

The appellant owners or the developers did not file any objections or move their little finger till the making of the award by the Collector. Instead of filing of the objections, opposing the proposed acquisition before the Collector and seeking redress at the appropriate stage they remained content with making representations to the Minister which was not a remedy recognised by the statute. It was only after the Collector had made his award and after notice for taking over possession was issued by the appellants that they rushed to the civil court with a suit in which too they did not assail the validity of the declaration under Section 26(2) of the MRTP Act read with Section 6 of the Land Acquisition Act. The remedy by way of a suit was clearly misconceived. The appellants could and ought to have challenged the acquisition proceedings without any loss of time. Having failed to do so, they were not entitled to claim any relief in the extraordinary jurisdiction exercised by the High Court under Article 226 of the Constitution. (Para 21). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength 2. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

Pralhad Lokram Dodeja v. State of Maharashtra, (2001) 4 Bom CR 35, affirmed

— **Ss. 4 and 6** *See* CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Tenancy and land matters, Arts. 226, 300-A and 14, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

[598]— Ss. 4 and 6 [as amended by Act of 1984] — Successive notifications/declarations — State dispossessing landowner without following legal requirements — Illegality of — Restoration of possession of the lands — Entitlement to — *Successive notifications under S. 4(1) issued in 1963 and 1968 for acquisition of suit land of appellant* —

He was dispossessed in 1963 without completing the legal requirements — In 1974 award was passed on the basis of the 1963 notification — Single Judge quashed that award with liberty to issue fresh notification — Accordingly one more notification was issued on 26-3-1983 and declaration under S. 6 was issued on 30-5-1983 but nowhere acquisition proceedings were completed — Division Bench reversed order of Single Judge — Untenability of — Held, in view of Noti. dt. 26-3-1983 issued under S. 4(1) and declaration dt. 30-5-1983 issued under S. 6, all other earlier notifications or declarations stand superseded — No proceedings took place consequent to notification and declaration of 1983 within the time prescribed — Thus acquisition proceedings stood elapsed and devoid of sanctity — Consequently, dispossession of appellant on basis of notification of 1963 was not in accordance with law especially when the right to property was a fundamental right — Hence he was entitled for restoration of possession of his lands — Since that is impossible due to constructions on the land, appellant entitled to compensation as of date — Constitution of India, Arts. 300-A and 14 — General Clauses Act, 1897, S. 21 (Paras 12 and 14). *Bhimandas Ambwani* v. *Delhi Power Co. Ltd.*, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *V. Gopala Gowda*, JJ. [Date of decision: 12-2-2013]

Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., (2013) 1 SCC 353: (2013) 1 SCC (Civ) 491, applied

Delhi Electricity Supply Undertaking v. Bhimandas Ambwani, ILR (2002) 1 Del 322: (2002) 63 DRJ 429; Delhi Electricity Supply Undertaking v. Bhimandas Ambwani, CM No. 893 of 2002 in LPA No. 46 of 1983, decided on 21-5-2002 (Del), reversed

— Ss. 4, 6 and 11 *See* 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', S. 24(2), (2014) 6 SCC 589: (2014) 3 SCC (Civ) 632

— S. 24(2), (2014) 6 SCC 586

— Ss. 4, 6, 11 and 31 *See* 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', S. 24(2), (2014) 6 SCC 583: (2014) 3 SCC (Civ) 626

[599]— Ss. 4, 6 and 18 — Successive notifications or declarations — Effect of — Reference on basis of superseded notifications — Impermissibility of — *Held, issuance of successive notifications or declarations would supersede the earlier notifications or declarations — It would not be permissible for either party to make reference to superseded notification or declaration — General Clauses Act, 1897, S. 21 — Constitution of India, Art. 300-A*

There cannot be any dispute to the settled legal proposition that successive notifications under Section 4 or successive declarations under Section 6 of the Act can be made, however, the effect of the same would be that earlier notification/declaration stands obliterated/superseded and in such a fact situation, it would not be permissible for either of the parties to make any reference to the said notifications/declarations which stood superseded. (Para 9). *Bhimandas Ambwani* v. *Delhi Power Co. Ltd.*, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448: AIR 2013 SC Supp 1052.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *V. Gopala Gowda*, JJ. [Date of decision: 12-2-2013]

[600]— Ss. 4, 6, 18 and 23 — Compensation — Market value — Determination of — Relevant date therefor, where restoration of illegally dispossessed land is impossible — *Held, as acquisition proceedings were vitiated, appellant entitled for restoration of possession of land — Restoration being impossible as staff quarters constructed thereon, date of judgment of Supreme Court be treated as the date of S. 4 notification and compensation to be computed on that basis — Parties directed to appear before Land Acquisition Collector — Liberty granted to appellant to approach courts under S. 18 and shall be entitled to all statutory benefits — Constitution of India, Arts. 300-A, 14, 21 and 136* (Para 14). *Bhimandas Ambwani* v. *Delhi Power Co. Ltd.*, (2013) 14 SCC 195: (2014) 2 SCC (Civ) 448.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *V. Gopala Gowda*, JJ. [Date of decision: 12-2-2013]

— S. 4(1) *See also* S. 5-A(1); S. 6(1); S. 16; S. 23; S. 54

[601]— Ss. 4(1), 6 and 9 — Exclusion of civil court's jurisdiction — Remedy by way of a civil suit not available in challenging validity of acquisition — *Instead of filing objections opposing proposed acquisition before Collector, landowners and land developer filing civil suit after award by the Collector and issue of notice for taking possession of land by Collector — Held, remedy by a suit was clearly misconceived — CPC, 1908, S. 9 and Or. 39 R. 1* (Para 21). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

— Ss. 4(1), 6 and 11 *See* CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Tenancy and land matters, Arts. 226, 136, 14 and 300-A, (2013) 11 SCC 500: (2014) 1 SCC (Civ) 594

— **Ss. 4(1), 6(1) and 11** *See* 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', S. 24(2), (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

— **S. 5-A** *See also* S. 4; S. 6(1); S. 17

[602]— S. 5-A — Hearing objectors — Embodiment of principles of natural justice — Hence, necessity for strict compliance therewith — When may compliance with S. 5-A be dispensed with under S. 17 — Principles summarised — Discretionary power of State in regard to dispensing with compliance S. 5-A — *Held, exercise of power by the Government under S. 17(1) does not necessarily result in exclusion of S. 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his objection. The use of the word 'may' in S. 17(4) makes it clear that it merely enables the Government to direct that the provisions of S. 5-A would not apply to the cases covered under S. 17(1) or 17(2) nvoking of S. 17(4) is not a necessary concomitant of the exercise of power under S. 17(1)*

On 14-03-2000 a requisition for acquiring land for construction of police lines was sent by the Superintendent of Police to the District Magistrate. After several correspondence, and after gap of seven years, a notification under Section 4 read with Section 17 of the Land Acquisition Act, 1894 was issued. Thereafter declaration was published under Section 6 of the Act. The Land Acquisition Officer passed award on 1-4-2009. The appellant owners challenged that notification before the High Court mainly on the ground that no urgency was involved. Further, it was also contended that no valid grounds were made for dispensation of objections under Section 5-A of the Act. The Single Judge rejected the writ petitions of the appellant landowners. In an intra-court appeal, the Division Bench dismissed the appeals. Hence, the present appeals.

Allowing the appeals,

Held :

From the analysis of the relevant statutory provisions and interpretation thereof by the Supreme Court in different cases, the following principles can be culled out:

(*i*) Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner's consent provided that such assertion is on account of public exigency and for public good.

(*ii*) The legislations which provide for compulsory acquisition of private property by the State fall in the category of expropriatory legislation and such legislation must be construed strictly.

(*iii*) Though, in exercise of the power of eminent domain, the Government can acquire the private property for public purpose, it must be remembered that compulsory taking of one's property is a serious matter. If the property belongs to economically disadvantaged segment of the society or people suffering from other handicaps, then the court is not only entitled but is duty-bound to scrutinise the action/decision of the State with greater vigilance, care and circumspection keeping in view the fact that the landowner is likely to become landless and deprived of the only source of his livelihood and/or shelter.

(*iv*) The property of a citizen cannot be acquired by the State and/or its agencies/instrumentalities without complying with the mandate of Sections 4, 5-A and 6 of the Act. A public purpose, however laudable it may be does not entitle the State to invoke the urgency provisions because the same have the effect of depriving the owner of his right to property without being heard. Only in a case of real urgency, the State can invoke the urgency provisions and dispense with the requirement of hearing the landowner or other interested persons.

(*v*) Section 17(1) read with Section 17(4) confers extraordinary power upon the State to acquire private property without complying with the mandate of Section 5-A. These provisions can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months. Therefore, before excluding the application of Section 5-A, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which land is proposed to be acquired.

(*vi*) The satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to mala fides or that the authorities concerned did not apply their mind to the relevant factors and the records.

(*vii*) The exercise of power by the Government under Section 17(1) does not necessarily result in exclusion of Section 5-A of the Act in terms of which any person interested in land can file objection and is entitled to be heard in support of his

objection. The use of the word 'may' in Section 17(4) makes it clear that it merely enables the Government to direct that the provisions of Section 5-A would not apply to the cases covered under Section 17(1) or 17(2). In other words, invoking of Section 17(4) is not a necessary concomitant of the exercise of power under Section 17(1).

(*viii*) The acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of Section 4 but that, by itself, does not justify the exercise of power by the Government under Sections 17(1) and/or 17(4). The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years. Therefore, the private property cannot be acquired for such purpose by invoking the urgency provision contained in Section 17(1). In any case, exclusion of the rule of audi alteram partem embodied in Sections 5-A(1) and (2) is not at all warranted in such matters.

(*ix*) If land is acquired for the benefit of private persons, the court should view the invoking of Sections 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition. (Para 8)

It is necessary to remember that the rules of natural justice have been ingrained in the scheme of Section 5-A with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that the land proposed to be acquired is not suitable for the purpose specified in the notification issued under Section 4(1). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilised for execution of the particular project or scheme. (Para 10)

Though it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons. (Para 10). *Prabhawati* v. *State of Bihar*, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 13-9-2013]

Radhy Shyam v. State of U.P., (2011) 5 SCC 553: (2011) 3 SCC (Civ) 1; Dev Sharan v. State of U.P., (2011) 4 SCC 769: (2011) 2 SCC (Civ) 483; Devender Kumar Tyagi v. State of U.P., (2011) 9 SCC 164: (2011) 4 SCC (Civ) 542, applied

Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402, followed

[603]— S. 5-A — Right given under, to landowners/persons interested to be heard on their objections — Compliance therewith — Determination of — Hearing of said objections by one Collector — But submission of report on those objections to Government by his successor i.e. another Collector without giving a fresh hearing — Effect thereof — Whether natural justice rule enshrined in S. 5-A, LA Act complied with in such a case — *Summarising the law on the said issue, reiterated, the very person/officer who accords the hearing to the objector must also submit the report/take decision on the objection — In case where his successor decides the case, the succeeding officer must give a fresh hearing to the objector concerned, failing which his order would stand vitiated having been passed in violation of principles of natural justice*

In the instant cases where the objections were filed under Section 5-A of the Land Acquisition Act, 1894 (hereinafter referred to as "the LA Act") by the tenure-holders and they had been given personal hearing by one Collector and the report was submitted to the State Government by his successor i.e. another Collector, the Division Bench of the High Court involved herein differed in opinion as to whether such report could be held to be legal or not. In view thereof, the matter was referred to a third Judge. The third Judge held that in such a situation where objections were heard by one Collector and the report was submitted by another Collector, the land acquisition proceedings stood vitiated being in violation of principles of natural justice. Thus, in view of the majority opinion, the said proceedings stood quashed by the impugned judgment and order. Hence, the present appeals.

Dismissing the appeals,

Held :

The law on the issue concerned can be summarised to the effect that the very person/officer who accords the hearing to the objector must also submit the report/take decision on the objection and in case his successor decides the case without giving a fresh hearing, the order would stand vitiated having been passed in violation of the principles of natural justice. (Para 20). *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607: AIR 2014 SC 2242: (2014) 6 Mah LJ 612: (2014) 104 ALR 893: (2014) 138 AIC 19: (2014) 3 Cal LJ 23: (2014) 3 Cal LT 29: (2014) 4 MPLJ 542.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 7-5-2014]

Rasid Javed v. State of U.P., (2010) 7 SCC 781; Automotive Tyre Manufacturers Assn. v. Designated Authority, (2011) 2 SCC 258; Chatro Devi v. Union of India, WP (C) No. 424 of 1987, decided on 11-5-2007 (Del); K. Sapra v. Union of India, WP (C) No. 2529 of 1985, decided on 11-5-2007 (Del); Balak Ram Gupta v. Union of India, (2005) 117 DLT 753, held, affirmed

[604]— Ss. 5-A, 4 and 16 — Consideration of report of Land Acquisition Collector while making declaration — Necessity of recording reasons where Government comes to a contrary conclusion — *Despite report of Land Acquisition Collector exempting land of appellant from acquisition since there was already a beautiful well-laid residential building thereon, Government seeking to acquire appellant's land without giving any reasons therefor — Held, acquisition of appellant's land is tainted with mala fides and liable to be set aside since basic protection afforded to landowners under S. 5-A was violated — Constitution of India, Arts. 300-A and 14* (Paras 10 to 16). *Vinod Kumar* v. *State of Haryana*, (2014) 3 SCC 203: (2014) 2 SCC (Civ) 267: AIR 2014 SC 1212: (2014) 2 CTC 331.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 28-1-2014]

Kamal Trading (P) Ltd. v. State of W.B., (2012) 2 SCC 25: (2012) 1 SCC (Civ) 506; Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana, (2013) 4 SCC 210: (2013) 2 SCC (Civ) 556; Women's Education Trust v. State of Haryana, (2013) 8 SCC 99: (2013) 3 SCC (Civ) 721; Shyam Nandan Prasad v. State of Bihar, (1993) 4 SCC 255, followed

Vinod Kumar v. State of Haryana, CWP No. 7746 of 2009, decided on 5-4-2011 (P&H) sub nom New Vidya Niketan Educational Society v. State of Haryana, CWP No. 7711 of 2009; Vinod Kumar v. State of Haryana, Review Application No. 388 of 2011 in CWP No. 7746 of 2009, order dated 16-12-2011 (P&H), reversed

[605]— Ss. 5-A and 6(1) — Making of report/recommendations by Collector to Government after hearing objections under S. 5-A — Proper mode of — Requirement on the part of Government regarding application of mind to said report for taking final decision on those objections for making a declaration under S. 6(1), LA Act — *Held, the recommendations made by Collector to Government after hearing objections under S. 5-A should reflect objective application of mind to the entire record including the objections filed — Collector must objectively consider the arguments advanced by objector and make recommendations, duly supported by brief reasons, as to why a particular piece of land should or should not be acquired and whether the plea put forward by objector merits acceptance — Government is then required to apply its mind to said report and take final decision on objection concerned for making a declaration under S. 6(1) of LA Act — Constitution of India, Arts. 300-A and 14*

It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. Therefore, under Section 5-A of the LA Act, the Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons. On consideration of the said objection under Section 5-A of the LA Act, the Collector is required to make a report to the State Government. The State Government is then required to apply its mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1) of the LA Act. (Paras 15, 16 and 14). *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607: AIR 2014 SC 2242: (2014) 6 Mah LJ 612: (2014) 104 ALR 893: (2014) 138 AIC 19: (2014) 3 Cal LJ 23: (2014) 3 Cal LT 29: (2014) 4 MPLJ 542.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 7-5-2014]

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402, affirmed

[606]— Ss. 5-A and 17 — Dispensation of hearing objectors by invoking urgency clause after gap of 7 yrs — Unsustainability of — Held, there was no valid ground for invoking urgency provision — *As 7 yrs were spent from initial requisition to issuance of preliminary notification under S. 4 — Hence, dispensation of hearing unjustified — No one can be deprived of his property except by authority of law — Merely because inconvenience would be caused to State, its illegal and arbitrary acts cannot be sustained — Hence, notification quashed — Constitution of India, Arts. 14 and 300-A. Prabhawati* v. *State of Bihar*, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 13-9-2013]

Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533; Radhy Shyam v. State of U.P., (2011) 5 SCC 553: (2011) 3 SCC (Civ) 1; Dev Sharan v. State of U.P., (2011) 4 SCC 769: (2011) 2 SCC (Civ) 483; Devender Kumar Tyagi v. State of U.P., (2011) 9 SCC 164: (2011) 4 SCC (Civ) 542, applied

Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402, followed

Prabhawati v. State of Bihar, LPA No. 681 of 2010, decided on 24-11-2011 (Pat); Prabhawati v. State of Bihar, CWJC No. 8653 of 2009, order dated 23-3-2010 (Pat), reversed

[607]— Ss. 5-A and 17(4) — Legislative history of S. 5-A, LA Act — Right of objection thereunder — Natural justice rule enshrined therein — Object of — Restated — Nature and extent of said right — Depriving a person of his said right — Grounds for — *Held, right to object under S. 5-A is a valuable right akin to a fundamental right — The limited right given under S. 5-A is not an empty formality but a substantive right — That right can be taken away only for good and valid reason and within the limitations prescribed under S. 17(4) of LA Act — Constitution of India, Arts. 14 and 300-A*

Section 5-A of the Land Acquisition Act, 1894 was not there in the original statute. In *J.E.D. Ezra*, (1902-03) 7 CWN 249, the Calcutta High Court expressed its inability to grant relief to the owner of the property whose land was sought to be acquired without giving any opportunity of hearing observing that there was no provision in the LA Act requiring observance of the principles of natural justice. It was subsequent to the said judgment that the LA Act was amended incorporating Section 5-A w.e.f. 1-1-1924. The Statement of Objects and Reasons for the said amendment provided that the original Act did not oblige the Government to enquire into and consider any objection of the persons interested nor the Act provided for right of hearing to the person whose interest stands adversely affected. (Para 10)

The rules of natural justice have been ingrained in the scheme of Section 5-A of the LA Act with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. (Para 12)

Section 5-A(2) of the LA Act, which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) of the LA Act or that there are other valid reasons for not acquiring the same. Thus, Section 5-A of the LA Act embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. (Para 13)

Therefore, Section 5-A of the LA Act confers a valuable important right and having regard to the provisions contained in Article 300-A of the Constitution of India has been held to be akin to a fundamental right. Thus, the limited right given to an owner/person interested under Section 5-A of the LA Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the LA Act. (Para 15). *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607: AIR 2014 SC 2242: (2014) 6 Mah LJ 612: (2014) 104 ALR 893: (2014) 138 AIC 19: (2014) 3 Cal LJ 23: (2014) 3 Cal LT 29: (2014) 4 MPLJ 542.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 7-5-2014]

J.E.D. Ezra v. Secy. of State for India, (1902-03) 7 CWN 249, statutorily superseded

Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai, (2005) 7 SCC 627; Anand Singh v. State of U.P., (2010) 11 SCC 242: (2010) 4 SCC (Civ) 423; Dev Sharan v. State of U.P., (2011) 4 SCC 769: (2011) 2 SCC (Civ) 483; Women's Education Trust v. State of Haryana, (2013) 8 SCC 99: (2013) 3 SCC (Civ) 721, affirmed

[608]— Ss. 5-A and 54 — Authority which must properly consider objections under S. 5-A is LAO — Failure of LAO to do so and/or non-application of mind to recommendations of LAO by Government/competent authority will lead to quashment of acquisition — Court can-

not substitute itself for LAO — *Hence, held, Division Bench of High Court erred in substituting itself for LAO, examining objections raised by appellant on merits and concluding that appellant was not prejudiced by violation of mandate of S. 5-A(2), which is clearly impermissible — Impugned judgment unsustainable — Acquisition quashed — Constitution of India, Arts. 226 and 300-A* (Para 23). *Gojer Bros. (P) Ltd.* v. *State of W.B.*, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588: (2014) 102 ALR 473: (2014) 134 AIC 248: (2014) 2 LW 305: (2014) 2 Cal LT 29.

Bench Strength 2. Coram: **G.S. Singhvi** and *Chockalingam Nagappan*, JJ. [Date of decision: 28-11-2013]

Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402; Kamal Trading (P) Ltd. v. State of W.B., (2012) 2 SCC 25: (2012) 1 SCC (Civ) 506; Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana, (2013) 4 SCC 210: (2013) 2 SCC (Civ) 556; Surinder Singh Brar v. Union of India, (2013) 1 SCC 403: (2013) 1 SCC (Civ) 620, followed

Gojer Bros. (P) Ltd. v. State of W.B., APO No. 126 of 2012, decided on 19-6-2013 (Cal); Gojer Bros. (P) Ltd. v. State of W.B., 2012 AIR CC 1664 (Cal), reversed

— **S. 5-A(1)** *See also* S. 4(1); S. 5-A(1); S. 5-A(2); S. 6(1); S. 54

[609]— Ss. 5-A(1) & (2), 4 and 6 — Cardinal importance of right/protection under S. 5-A — Hearing under S. 5-A — Mandatory requirement for proper compliance with — *LAO, initially, after hearing objections, recommending that lands in question need not be acquired by respondent authorities for purpose intended in acquisition notification — Thereafter, upon survey of lands, LAO changing his stance and suggesting that said lands should not be exempted from acquisition, without hearing appellant landowners — Held, order so passed by LAO was adverse to interests of appellants and they were entitled to reasonable opportunity of hearing to represent their stand before LAO in altered circumstances of the case — Non-adherence to principles of natural justice at the stage of making recommendations, not only defeats the purpose and object of provisions of S. 5-A(2) but also introduces illegality into the opinion formulated by State Government after considering the report so submitted by LAO and therefore, by necessary implication, permeates the notification issued under S. 6 of the Act with such illegality — Hence, notifications issued under S. 6, qua petitioners, liable to be set aside — Constitution of India, Arts. 300-A and 14. Lajja Ram* v. *UT, Chandigarh*, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40.

Bench Strength 2. Coram: *H.L. Dattu* and *Dipak Misra*, JJ. [Date of decision: 27-2-2013]

Lajja Ram v. UT of Chandigarh, CWP No. 14018 of 2008, order dated 13-8-2008 (P&H), reversed

[610]— Ss. 5-A(1) & (2), 4 and 6 — Cardinal importance of right/protection under S. 5-A — Proper compliance with S. 5-A — Principles reiterated — *On facts held, non-consideration of objections filed by appellants had resulted in denial of effective opportunity of hearing to them — Besides, manner in which Government approved recommendation made by LAO favouring acquisition of property reflected total non-application of mind by competent authority — Hence, acquisition quashed — Constitution of India, Arts. 14 and 300-A* (Paras 13 to 23). *Gojer Bros. (P) Ltd.* v. *State of W.B.*, (2013) 16 SCC 660: (2014) 5 SCC (Civ) 588: (2014) 102 ALR 473: (2014) 134 AIC 248: (2014) 2 LW 305: (2014) 2 Cal LT 29.

Bench Strength 2. Coram: **G.S. Singhvi** and *Chockalingam Nagappan*, JJ. [Date of decision: 28-11-2013]

Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402; Kamal Trading (P) Ltd. v. State of W.B., (2012) 2 SCC 25: (2012) 1 SCC (Civ) 506; Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana, (2013) 4 SCC 210: (2013) 2 SCC (Civ) 556; Surinder Singh Brar v. Union of India, (2013) 1 SCC 403: (2013) 1 SCC (Civ) 620, followed

Gojer Bros. (P) Ltd. v. State of W.B., APO No. 126 of 2012, decided on 19-6-2013 (Cal); Gojer Bros. (P) Ltd. v. State of W.B., 2012 AIR CC 1664 (Cal), reversed

[611]— Ss. 5-A(1) & (2), 4 and 6 — Non-application of mind — Cardinal importance of right/protection under S. 5-A — Mechanical rejection of large number of substantive objections raised by appellants — *Held, report of LAO recommending acquisition of appellants' land was vitiated due to non-application of mind — Constitution of India, Arts. 300-A and 14* (Para 9). *Gurbinder Kaur Brar* v. *Union of India*, (2013) 11 SCC 228: (2014) 1 SCC (Civ) 32: AIR 2013 SC 3028.

Bench Strength 2. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 22-7-2013]

Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, applied

Surinder Singh Brar v. Union of India, CWP No. 5065 of 2007, order dated 18-3-2011 (P&H), reversed

[612]— Ss. 5-A(1) & (2), 4(1) and 6(1) — Hearing of objections — Non-grant of — Violation of S. 5-A(2) — Acquisition of land vitiated — *High Court erred in not considering such substantive ground of challenge and also of discrimination raised and not quashing the acquisition proceedings — Constitution of India, Art. 300-A and 14* (Paras 14 to 19). *Hukam Chand* v. *State of Haryana*, (2013) 11 SCC 578: (2014) 1 SCC (Civ) 215.

Bench Strength 3. Coram: *G.S. Singhvi, H.L. Gokhale* and *Ranjana P. Desai*, JJ. [Date of decision: 21-2-2013]

Hukam Chand v. State of Haryana, CWP No. 8654 of 2010, decided on 3-2-2011 (P&H), reversed

— **S. 5-A(2)** *See* S. 5-A(1); S. 54

— **S. 6** *See* S. 3(b); S. 3(f); S. 4; S. 4(1); S. 5-A(1); S. 23; S. 28; S. 48; S. 48(1)

— **S. 6 [as amended by Act of 1984]** *See* S. 4

— **S. 6(1)** *See also* S. 5-A; S. 5-A(1); S. 16; S. 54

[613]— Ss. 6(1), 4(1) & 5-A — Issuing of declaration after rectifying illegalities committed in preparation of report by LAO after 11 yrs of issuance of notification under S. 4(1) — Held, impermissible (Para 10). *Gurbinder Kaur Brar* v. *Union of India*, (2013) 11 SCC 228: (2014) 1 SCC (Civ) 32: AIR 2013 SC 3028.

Bench Strength 2. Coram: **G.S. Singhvi** and *V. Gopala Gowda*, JJ. [Date of decision: 22-7-2013]

Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533, applied

Surinder Singh Brar v. Union of India, CWP No. 5065 of 2007, order dated 18-3-2011 (P&H), reversed

— **S. 9** *See* S. 3(b); S. 4; S. 4(1)

— **S. 11** *See* S. 16; S. 18; S. 23

— **S. 16** *See also* S. 4; S. 5-A; S. 23; S. 48

[614]— Ss. 16, 4(1), 6(1) and 11 — Vesting of acquired land in Government free from all encumbrances — Taking of possession — Necessity — *Held, after passing of award by LAO/ Collector, for acquired lands to vest in State Government free from all encumbrances, it must be succeeded by taking possession of lands — In the instant case, possession of land was not taken by respondent State and appellants continued to be in possession of acquired lands — Consequently, land had not vested in the State free from all encumbrances — High Court erred in proceeding on incorrect assumption in respect of possession of acquired land and erroneously concluded vesting of land in respondent State, and dismissing appellant's writ petition — It is only after possession is taken that land vests in the State, whereafter aggrieved person cannot challenge validity of the notifications — Constitution of India, Art. 300-A* (Paras 12 to 17). *Lajja Ram* v. *UT, Chandigarh*, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40.

Bench Strength 2. Coram: *H.L. Dattu* and *Dipak Misra*, JJ. [Date of decision: 27-2-2013]

— **Ss. 16 and 11 — Vesting of right, title and interest in land, held, takes place only upon possession being taken by Collector** *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

— **Ss. 16 and 31 — Lapse of land acquisition proceedings under 1894 Act, under 2013 Act** *See* 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897, (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274

— **Ss. 16 and 48** *See also* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 9 and 10, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665

[615]— Ss. 16 and 48 — De-acquisition of land — Only mode by which land may be de-acquired is by valid withdrawal notification under S. 48 — Reconveyance of acquired land without a prior withdrawal notification is inefficacious and void — *Transfer of Property Act, 1882, Ss. 7, 8 and 54* (Para 11). *Tarabai* v. *State of Karnataka*, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665: AIR 2013 SC 2881: (2014) 3 Mah LJ 236: (2014) 2 MPLJ 323.

Bench Strength 2. Coram: **H.L. Gokhale** and *Ranjana P. Desai*, JJ. [Date of decision: 3-9-2013]

Basanth Tiles v. Parashuram, (2006) 6 Kant LJ 75: 2006 AIHC 195, affirmed

— **S. 17** *See also* S. 5-A; S. 23

[616]— Ss. 17, 4 and 5-A — Invocation of S. 17 — Principles therefor, summarised — Cases in which S. 17 may not be resorted to or cases in which compliance with S. 5-A may not at all be dispensed with — *Held, the acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes within the meaning of S. 4 of the 1894 Act but that, by itself, does not justify the exercise of power by the Government under Ss. 17(1) and/or 17(4) — The court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to development of residential, commercial, industrial or institutional areas usually take few years — Therefore, private property cannot be acquired for such purpose by invoking the urgency provision contained in S. 17(1) — In any case, exclusion of the rule of audi alteram partem embodied in Ss. 5-A(1) and (2) is not at all warranted in such matters — Constitution of India, Arts. 14 and 300-A. Prabhawati* v. *State of Bihar*, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776.

Bench Strength 2. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 13-9-2013]

Padma Sundara Rao v. State of T.N., (2002) 3 SCC 533; Radhy Shyam v. State of U.P., (2011) 5 SCC 553: (2011) 3 SCC (Civ) 1; Dev Sharan v. State of U.P., (2011) 4 SCC 769: (2011) 2 SCC (Civ) 483; Devender Kumar Tyagi v. State of U.P., (2011) 9 SCC 164: (2011) 4 SCC (Civ) 542, applied

Raghbir Singh Sehrawat v. State of Haryana, (2012) 1 SCC 792: (2012) 1 SCC (Civ) 402, followed

Prabhawati v. State of Bihar, LPA No. 681 of 2010, decided on 24-11-2011 (Pat); Prabhawati v. State of Bihar, CWJC No. 8653 of 2009, order dated 23-3-2010 (Pat), reversed

[617]— Ss. 17 and 5-A — Invocation of S. 17 of 1894 Act to benefit private persons — Approach

of Court — *Held, if land is acquired for the benefit of private persons, the court should view the invocaton of Ss. 17(1) and/or 17(4) with suspicion and carefully scrutinise the relevant record before adjudicating upon the legality of such acquisition — Constitution of India, Arts. 14 and 300-A* (Para 8.9). *Prabhawati* v. *State of Bihar*, (2014) 13 SCC 721: (2014) 5 SCC (Civ) 776.

Bench Strength 2. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 13-9-2013]

— **S. 17(1)** *See* S. 48

— **S. 17(4)** *See* S. 5-A; S. 48

— **S. 18** *See also* S. 4; S. 23; S. 28; S. 28-A; S. 54

[618]— S. 18 — Reference — Maintainability — Land not having been acquired under LA Act, S. 18 reference, held, is not maintainable — Therefore, High Court was not justified in dismissing writ on ground that remedy under S. 18 had not been exhausted (Paras 9 and 8). *Syed Maqbool Ali* v. *State of U.P.*, (2011) 15 SCC 383: (2014) 2 SCC (Civ) 493: AIR 2011 SC 2542: (2011) 3 Cal LJ 16.

Bench Strength 2. Coram: **R.V. Raveendran** and *A.K. Patnaik*, JJ. [Date of decision: 4-4-2011]

[619]— Ss. 18, 11, 23 and 54 — Reference to court — Role of Reference Court — Reference Court answering issues in favour of appellants and enhancing compensation relying entirely upon discussion in draft award and taking advantage of an apparent conflict between discussion contained therein and amount actually awarded by SLAO — Held, High Court was right in reversing order of Reference Court — *In absence of any evidence to prove that amount of award by Collector does not represent the true market value of property as on date of preliminary notification, Reference Court will be helpless and will not be justified in granting any enhancement — Court cannot go by surmises and conjectures while answering reference nor can it assume role of an appellate court and enhance amount awarded by reappraising material that was collected and considered by the Collector — What is important to remember is that a reference to a civil court is not in nature of an appeal from one forum to another where appellate forum takes a view based on evidence before forum below — This legal position is settled by decisions of Supreme Court — CPC, 1908, Or. 7 R. 14* (Para 7). *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397: AIR 2013 SC 3452.

Bench Strength 2. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 5-7-2013]

— **Ss. 18 and 23** *See also* CONSTITUTION OF INDIA, Arts. 300-A and 136, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397

[620]— Ss. 18 and 23 — Reference to court — Burden of proof — Proper discharge of — Held, on facts, landowners (appellants) did not lead any evidence in support of their claim before Reference Court to prove that market value of land acquired was more than what was awarded as compensation by Collector — *Neither order passed by Reference Court nor passed by High Court make any reference to such evidence — Absence of any such evidence was, therefore, bound to go against the appellants — So long as appellants failed to discharge the burden cast on them, there was no question of Reference Court granting any enhancement — High Court was, in that view, justified in holding that enhancement granted in absence of any evidence was unjustified — CPC, 1908, Or. 18 Rr. 1 to 3 — Evidence Act, 1872, Ss. 101, 102 and 103* (Para 11). *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397: AIR 2013 SC 3452.

Bench Strength 2. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 5-7-2013]

[621]— Ss. 18 and 23 — Reference to court — Practice and procedure — Whether claimants could rely on documents produced by respondent State before Collector — *Held, on facts, no evidence having been adduced by respondent-defendants, whether documentary or otherwise, there was no question of appellant relying upon such non-existent evidence — Merely because some documents were referred to in the draft award by Collector, did not make said documents admissible by themselves to enable plaintiffs to refer to or rely upon the same in support of a possible enhancement unless those were either admitted by the plaintiff or properly proved and exhibited at the trial, same could not by themselves constitute evidence except where such documents were public documents admissible by themselves under any provision — CPC, 1908, Or. 8 R. 5(1) proviso and Or. 12 R. 6 — Evidence Act, 1872, Ss. 74, 76 and 77* (Paras 12 and 13). *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397: AIR 2013 SC 3452.

Bench Strength 2. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 5-7-2013]

[622]— Ss. 18, 23 and 24 — Reference to court — Burden of proof — Held, it is trite that in a reference under S. 18 on question of adequacy of

compensation determined by Collector, burden to prove that Collector's award does not correctly determine the amount of compensation payable to landowner is upon the owner concerned — *It is for the claimant to prove that the amount awarded by Collector needs enhancement, and if so, to what extent — Claimant can do so by adducing evidence, whether oral or documentary which Reference Court would evaluate having regard to provisions of Ss. 23 and 24 of Land Acquisition Act while determining compensation payable to owners — To that extent claimant is in position of a plaintiff before Court — Evidence Act, 1872, Ss. 101, 102 and 103 — CPC, 1908, Or. 7 Rr. 7 & 14* (Paras 7 to 10). *Ramanlal Deochand Shah* v. *State of Maharashtra*, (2013) 14 SCC 50: (2014) 2 SCC (Civ) 397: AIR 2013 SC 3452.

Bench Strength **2**. Coram: **T.S. Thakur** and *Gyan Sudha Misra*, JJ. [Date of decision: 5-7-2013]

[623]— Ss. 18 and 30 — Relative scope and applicability — Limitation period under S. 18, when commences in a case where no apportionment is made by Collector i.e. when S. 30 applies — *S. 18 applies to situations where apportionment made in award is objected to by a beneficiary thereunder while S. 30 applies when no apportionment whatsoever is made by Collector on account of conflicting claims — Thus, held, a reference under S. 18 for enhanced compensation can be legitimately sought by the claimant after an order of apportionment is passed either by the court in reference under S. 30 or in a civil suit in his favour, and limitation period under S. 18(2) shall in such a case only commence from date when such order/award of apportionment is either communicated to the party concerned or is known by the party concerned either actually or constructively* (Para 11). *Madan* v. *State of Maharashtra*, (2014) 2 SCC 720: (2014) 2 SCC (Civ) 187: AIR 2014 SC 846: (2014) 4 Mah LJ 26: (2014) 2 MPLJ 710: (2014) 1 KLT 22: (2014) 102 ALR 672: (2014) 133 AIC 120: (2014) 2 LW 689.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjana P. Desai* and **Ranjan Gogoi**, JJ. [Date of decision: 6-12-2013]

Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, affirmed

State of Maharashtra v. Madan Vithalrao Naiknaware, (2009) 1 Bom CR 70: (2008) 6 AIR Bom R 748, reversed

[624]— Ss. 18, 30, 31 and 3(b) — Proceedings in Reference Court — Direct impleadment of or application for apportionment of compensation by a third party (not a party in LA Act proceedings at any stage) — Impermissibility — Said impleadment or application for apportionment, held, is impermissible — *Said third party is not entitled to set aside award made by Reference Court by seeking help of Or. 9 R. 13 r/w S. 151 CPC — Such inherent powers cannot be invoked by alleging fraud on a party (as distinguished from fraud on a court) — Impugned High Court order setting aside the award of Reference Court, therefore, set aside — Respondents given liberty to seek appropriate remedy by resorting to appropriate proceedings as permissible under law — CPC, 1908, S. 151 — CPC, 1908, Or. 9 R. 13*

The respondents were claiming their right over certain lands on basis of being a vested remainder under judgment and decree dated 23-4-1958. Respondents were not party to the land acquisition proceedings concerning land of appellants. In the reference under Section 18, LA Act, the Tribunal by order dated 22-5-2000 enhanced the compensation of the appellants. When the respondents learnt about that order they filed an application under Order 9 Rule 13 read with Section 151 CPC, for the purpose of setting aside the said award dated 22-5-2000. The Tribunal vide order dated 20-2-2002, rejected the said application on the ground that such an application can only be filed by a person who was a party to the proceedings in which such an order was passed, and that such an application was not maintainable at the behest of a stranger.

The High Court, however, in writ allowed the application of the respondents holding that while an application under Order 9 Rule 13 CPC was not maintainable, the said award should have been set aside in exercise of its powers under Section 151 CPC, as the same was required to be done, in order to do substantial justice between the parties. Hence, the present appeals.

Allowing the appeals and setting aside the order of the High Court,

Held :

In the instant case, the proceedings stood concluded so far as the court of first instance is concerned, and the respondent was not the party before the said court. Permitting an application under Order 9 Rule 13 CPC by a non-party, would amount to adding a party to the case, which is provided for under Order 1 Rule 10 CPC, or setting aside the ex parte judgment and decree i.e. seeking a declaration that the decree is null and void for any reason, which can be sought independently by such a party. In the instant case, as the fraud, if any, as alleged, has been committed *upon a party*, and not upon the court, the same is not a case where Section

151 CPC could be resorted to by the court, to rectify a mistake, if any was made. (Para 22)

An application under Order 9 Rule 13 CPC cannot be filed by a person who was not initially a party to the land acquisition proceedings. The Reference Court does not have the jurisdiction to entertain any application of *pro interesse suo*, or in the nature thereof. A person who has not made an application before the Land Acquisition Collector, for making a reference under Section 18 or Section 30 LA Act, cannot get himself impleaded directly before the Reference Court. In the event that any other person has withdrawn the amount of compensation, the "person interested", if so aggrieved, has a right to file a suit for the recovery of his share. (Paras 28.1 and 24 and 27)

Thus the impugned judgment and order of the High Court cannot be sustained in the eye of the law, and are hence set aside. The respondents are at liberty to seek appropriate remedy, by resorting to appropriate proceedings, as permissible in law. (Paras 29 and 30). *Ram Prakash Agarwal* v. *Gopi Krishan*, (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197: (2013) 3 CTC 356: (2013) 116 Cut LT 609: (2013) 98 ALR 269: (2013) 125 AIC 32: (2013) 3 LW 280.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

Gopi Krishan v. Ram Prakash Agarwal, (2012) 90 ALR 96, reversed

[625]— Ss. 18(2) and 30 — Reference — Limitation period to run from date of knowledge of award — Appellants had no knowledge of award till reference under S. 30 was decided — Appellants filed reference under S. 18 within six weeks of order passed in reference under S. 30 — *Reiterated, expression "the date of the Collector's award" used in proviso (b) to S. 18(2) must be understood to mean the date when award is either communicated to party or is known by him either actually or constructively — It will be unreasonable to construe words "from the date of the Collector's award" used in proviso to S. 18 in a literal or mechanical way — Held, High Court erred in holding that reference was barred by limitation — High Court's order set aside and order passed in reference under S. 18, restored — Limitation Act, 1963, S. 12* (Paras 9, 10 and 13). *Madan* v. *State of Maharashtra*, (2014) 2 SCC 720: (2014) 2 SCC (Civ) 187: AIR 2014 SC 846: (2014) 4 Mah LJ 26: (2014) 2 MPLJ 710: (2014) 1 KLT 22: (2014) 102 ALR 672: (2014) 133 AIC 120: (2014) 2 LW 689.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjana P. Desai* and **Ranjan Gogoi**, JJ. [Date of decision: 6-12-2013]

Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, affirmed

State of Maharashtra v. Madan Vithalrao Naiknaware, (2009) 1 Bom CR 70: (2008) 6 AIR Bom R 748, reversed

— S. 23 *See also* S. 4; S. 18; S. 28; S. 54

[626]— S. 23 — Annual escalation of land prices/market value — *Held, 12% p.a. increase can be applied on value of land determined as Rs 520 per sq yd in 1993, up to 2001 when S. 4 notification was issued in present case — However, taking note of attrition in land rates during relevant period, enhancement of value by 12% p.a. increased only for 4 yrs, instead of for entire period — Clarified that non-grant of escalation for entire period was in peculiar facts of this case, and the same was not to be treated as a precedent — The general rule of law remained that escalation was normally to be granted for the entire period — Thus, valuation of land in 2001 shall come to Rs 770 per sq yd — After deduction of one-third net valuation comes to Rs 514 per sq yd — Compared to land value of this very area in 1993 which was fixed at Rs 350 per sq yd, increase by about 50% over 7 yrs or so, quite reasonable as compensation legitimately due to appellants — Compensation @ Rs 514 per sq yd fixed* (Para 14). *Kashmir Singh* v. *State of Haryana*, (2014) 2 SCC 165: (2014) 1 SCC (Civ) 672: (2014) 3 Mah LJ 232: (2014) 2 MPLJ 310: (2014) 102 ALR 469: (2014) 134 AIC 226.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 13-12-2013]

Ashrafi v. State of Haryana, (2013) 5 SCC 527: (2013) 3 SCC (Civ) 169, applied

Narinder Kumar v. State of Haryana, RFA No. 1876 of 2006, decided on 20-9-2010 (P&H), reversed

[627]— S. 23 — Compensation — Computation of — Comparative sale method — Identically situated land — *Division Bench of High Court relying upon sale deed dt. 7-1-1993 as per the already granted rate of compensation with benefit of escalation in price in* Ugregowda case, *MFA No. 2435 of 2000, decided on 15-9-2003 (KAR) by concurrent Bench of High Court — Land in question situated in the same village and acquired for the same purpose — Held, once High Court accepted sale deed dt. 7-1-1993 as the touchstone for determination of the compensation payable for identically situated land, there could be no justification for awarding less compensation to appellants — Land Acquisition Act, 1894, S. 54* (Para 7). *Salaha Begaum* v. *Land Acquisition Officer*, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563: (2013) 97 ALR 200: (2013) 123 AIC 255.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 3-12-2012]

Salaha Begum v. Land Acquisition Officer, MFA No. 2836 of 2003, decided on 5-8-2005 (KAR), reversed

[628]— S. 23 — Compensation — Computation of — Deductions — When not called for — *On facts, Division Bench of High Court did take notice of the sale deed dt. 7-1-1993 but treated sale consideration for three acres land as Rs 5,10,000 by deducting Rs 1,50,000 towards value of farmhouse and electric connection — Held, by doing so, High Court committed serious error as there was no such deduction in exemplar case* Ugregowda case, *MFA No. 2435 of 2000, decided on 15-9-2003 (KAR)* (Para 7). *Salaha Begaum* v. *Land Acquisition Officer*, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563: (2013) 97 ALR 200: (2013) 123 AIC 255.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 3-12-2012]

ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745, followed

Ugregowda v. Land Acquisition Officer, MFA No. 2435 of 2000, decided on 15-9-2003 (KAR), approved

[629]— S. 23 — Compensation — Deduction towards development — Deduction in value of well-developed land — Unsustainability of — Acquisition of irrigated and wasteland — *High Court enhanced compensation to 11,15,000 for both irrigated and wastelands — It also deducted 1/3rd of value holding that land was not developed — Impropriety of — Held, land appeared to be well developed — Deduction of 1/3rd value was harsh — Hence, Supreme Court deducted 10% of value towards developments — Thus, compensation to appellant landowners was settled at such value after deduction of 10% from 11,15,000 whereas other statutory benefits maintained* (Paras 10 to 13). *Indraj Singh* v. *State of Haryana*, (2013) 14 SCC 491: (2014) 2 SCC (Civ) 777.

Bench Strength **2**. Coram: **Anil R. Dave** and *Dipak Misra*, JJ. [Date of decision: 19-8-2013]

Indraj Singh v. Haryana State, RFA No. 950 of 1996, decided on 6-11-2009 (P&H) sub nom Ran Singh v. Haryana State, RFA No. 792 of 1996, modified

[630]— S. 23 — Compensation — Determination of market value — Appropriate deduction towards development cost — *Acquired land within developed municipal limits — Hence held, deduction of 40% towards development cost as determined by High Court unjustified — Deduction of 1/4th of market value made by Reference Court appropriate and liable to be restored* (Paras 7 to 10). *Mohinder Singh* v. *State of Haryana*, (2014) 8 SCC 897: (2014) 4 SCC (Civ) 666: (2015) 1 Mah LJ 39: (2014) 107 ALR 712: (2015) 1 MPLJ 50: (2014) 144 AIC 207.

Bench Strength **3**. Coram: *T.S. Thakur*, **Chockalingam Nagappan** and *A.K. Goel*, JJ. [Date of decision: 5-8-2014]

Charan Dass v. H.P. Housing and Urban Development Authority, (2010) 13 SCC 398: (2010) 4 SCC (Civ) 933; Kasturi v. State of Haryana, (2003) 1 SCC 354, affirmed

Mohinder Singh v. State of Haryana, LPA No. 310 of 1999, decided on 11-9-2000 (P&H), partly reversed

[631]— S. 23 — Compensation — Market Value — Acquisition of large tract of land — Exemplars of small plots — Determining factors — Larger area if to be compared with smaller area — Validity — *Reiterated, it is necessary to make appropriate deduction towards development cost while determining value of large extent of agricultural land with reference to value of small residential plot in the vicinity which may not be less than 20% to 25% — Held, courts can rely on sale deeds of smaller residential plots while determining market value of larger agricultural land — Held, in the instant case, Reference Court was justified in fixing Rs 250 per decimal after deduction of 37% in relation to sale deeds of smaller plots and thereafter allowing 10% increase in value of land — High Court was wrong in disregarding sale deeds and wrongly failed to consider increase in value of land and deduction of 75% is not in accordance with law and it arrived at a finding of Rs 100 per decimal on mere presumptions and surmises — On appreciation of evidence, held, High Court also committed error in considering smaller plots as homestead land instead of agricultural land and as to non-existence of standing crop — Order passed by High Court set aside and that of Reference Court restored* (Paras 18 to 23) . *Ahsanul Hoda* v. *State of Bihar*, (2013) 14 SCC 59: (2014) 2 SCC (Civ) 406: AIR 2013 SC 3463: (2013) 99 ALR 895: (2013) 128 AIC 22: (2013) 116 Cut LT 1092.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 1-7-2013]

State of Bihar v. Ahsanul Hoda, First Appeal No. 189 of 2005, decided on 10-2-2011 (Pat), reversed

[632]— S. 23 — Compensation — Market value — Circle rate/Collector's rate or comparable Sales method — *Held, normally it is not safe to proceed on the basis of circle rates or Collector's rates, as they are broad assessments which may or may not be based on proper scientific survey and verification — It is well settled that the market value has to be determined with reference to comparable lands and with reference to comparable sales, if available — The commercial plots are not comparable to the acquired lands — Insofar as small residential plots abutting the main road leading to G.T. Road they cannot obviously be applied directly without any deductions to arrive at the*

value of undeveloped agricultural land even if the acquired lands may be situated immediately near the town outskirts (Para 9). *Haryana State Agricultural Market Board* v. *Krishan Kumar*, (2011) 15 SCC 297: (2014) 2 SCC (Civ) 461: AIR 2011 SC 2540.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 5-4-2011]

[633]— S. 23 — Compensation — Market value — Deductions towards development charges — *Held, further deduction will have to be made towards the cost of development, that is, the cost of levelling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines — It would be appropriate to apply an aggregate deduction of 45% from the value of residential plots (towards the land for development and the cost of development) to arrive at the market value of the acquired lands* (Paras 10 and 11). *Haryana State Agricultural Market Board* v. *Krishan Kumar*, (2011) 15 SCC 297: (2014) 2 SCC (Civ) 461: AIR 2011 SC 2540.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 5-4-2011]

[634]— S. 23 — Compensation — Market value — Determination of — Factors to be considered by Officials and Courts — Reiterated

It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(*i*) Existing geographical situation of the land.

(*ii*) Existing use of the land.

(*iii*) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(*iv*) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

Further, Section 23 of the Land Acquisition Act, 1894 specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Section 4(1).

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. (Para 16.3)

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. (Para 16.4). *Digamber* v. *State of Maharashtra*, (2013) 14 SCC 406: (2014) 2 SCC (Civ) 763: AIR 2013 SC 3532: (2013) 100 ALR 393: (2013) 129 AIC 82.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 1-8-2013]

Atma Singh v. State of Haryana, (2008) 2 SCC 568: (2008) 1 SCC (Civ) 621; Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer, (2012) 7 SCC 595: (2012) 4 SCC (Civ) 290; Viluben Jhalejar Contractor v. State of Gujarat, (2005) 4 SCC 789, applied

Nama Padu Huddar v. State of Maharashtra, 1994 BCJ 316; State of Maharashtra v. Ramchandra Damodar Koli, (1997) 2 Mah LR 325, held, approved

[635]— S. 23 — Compensation — Market value — Evidence of — Held, the highest of the rates for residential plots taken by the High Court will apply to residential plots in developed layouts adjoining the main road, in prime areas — *There is no evidence to show the situation of the plots which fetched Rs 425 per square yard and situation of the plots which fetched Rs 225 per square yard — In the absence of any evidence, the deduction of 45% should be made from Rs 225 per square yard which necessarily will apply to residential plots in outlying areas like the acquired lands, that is, Rs 140 per square yard or Rs 6,77,600 per acre* (Para 11). *Haryana State Agricultural Market Board* v. *Krishan Kumar*, (2011) 15 SCC 297: (2014) 2 SCC (Civ) 461: AIR 2011 SC 2540.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 5-4-2011]

[636]— S. 23 — Determination of market value — Principles governing — Reiterated (Paras 21 to 23). *Himmat Singh* v. *State of M.P.*, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496: (2014) 133 AIC 30.

Bench Strength **3**. Coram: **G.S. Singhvi**, *Shiva Kirti Singh* and *Chockalingam Nagappan*, JJ. [Date of decision: 29-11-2013]

[637]— S. 23 — Market value — Comparative sales method — Deductions towards development charges — Approach: considerations for — *Reference Court making three-tier deductions viz. (i) 25% for leaving out portions of acquired land for purpose of laying roads, drains etc., (ii) 25% towards expenses for development work, and (iii) 50% towards smallness of plots sold, which was approved by High Court — Held, such approach was clearly erroneous since respondent State had not even suggested that such development work was undertaken for purpose of laying railway line — Hence, deductions made under first two heads unsustainable — However, considering smallness of plot of exemplar sale deeds, deduction of 50% permitted. Himmat Singh* v. *State of M.P.*, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496: (2014) 133 AIC 30.

Bench Strength **3**. Coram: **G.S. Singhvi**, *Shiva Kirti Singh* and *Chockalingam Nagappan*, JJ. [Date of decision: 29-11-2013]

[638]— S. 23 — Market Value — Yearly escalation over the rate of exemplar (sale deed relied on) — Benefit of escalation of price — *Reiterated that the exercise undertaken for fixing market value and determination of compensation payable to landowner should necessarily involve consideration of escalation in land prices — Further held, appellants entitled to compensation @ Rs 2,20,000 per acre with benefit of 10% increase for the time gap of two years between the notification issued for acquisition of exemplar's land and the notification issued for acquisition of their land — Constitution of India, Art. 300-A* (Paras 10 and 11). *Salaha Begaum* v. *Land Acquisition Officer*, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563: (2013) 97 ALR 200: (2013) 123 AIC 255.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 3-12-2012]

ONGC Ltd. v. Rameshbhai Jivanbhai Patel, (2008) 14 SCC 745, followed

Ugregowda v. Land Acquisition Officer, MFA No. 2435 of 2000, decided on 15-9-2003 (KAR), approved

[639]— S. 23 — Market value of land under acquisition — Assessment of — Relevant factors to be considered — Law as to, summarised — Clarified, use for which the land is sought to be acquired and its remote potential value in future, should not be taken into consideration — *Market value of said land is to be assessed taking into account its value as it occurs on date of notification under S. 4 of LA Act, 1894 — Existing use of land, geographical situation/location of land along with its advantages/disadvantages i.e. distance from national or State highway or renowned tourist destination or road situated within developed area, market value of other land situated in same locality or adjacent or very near to acquired land and also the size of such land, rise or depression in value of land in locality consequent to acquisition and various other factors including application of belting system in certain situations, reiterated to be considered while assessment of market value of acquired land — Market value of land is to be assessed keeping in mind the limitations prescribed in certain exceptional circumstances under S. 23 of the LA Act, 1894 — Guesswork, though allowed, is permissible only to a limited extent. Bhule Ram* v. *Union of India*, (2014) 11 SCC 307: (2014) 4 SCC (Civ) 94: AIR 2014 SC 1957: (2014) 105 ALR 466: (2014) 139 AIC 142.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *Jasti Chelameswar*, JJ. [Date of decision: 28-3-2014]

[640]— S. 23 — Market value of land under acquisition — Determination of — Burden of proof in respect of — Duty is of claimant to lead evidence in support of its case — In absence thereof, court is not under legal obligation to determine market value merely as per prayer of claimant — *In present case, appellant claiming before High Court enhancement of market value of his land from Rs 5,99,850 per acre to Rs 10,00,000 per acre — High Court assessing market value @ Rs 6,51,000 per acre pursuant to relevant judgment relied on by appellant in this regard — Land of appellant situated in revenue estate L and appellant claiming compensation at the rate which had been awarded in revenue estate J — No site plan produced to show proximity of appellant's land to land situated in estate J — That apart, no evidence existing to compare the said lands and determine whether the award in respect of land situated in estate J could be used as an exemplar — On these facts, appeal preferred by claimant against the said judgment of High Court, held, had no merit — Hence, was liable to be dismissed — Evidence Act, 1872, Ss. 101 to 103. Bhule Ram* v. *Union of India*, (2014) 11 SCC 307: (2014) 4 SCC (Civ) 94: AIR

2014 SC 1957: (2014) 105 ALR 466: (2014) 139 AIC 142.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *Jasti Chelameswar*, JJ. [Date of decision: 28-3-2014]

Ram Chander v. Union of India, RFA No. 416 of 1986, order dated 6-10-1986 (Del); Hari Chand v. Union of India, (2001) 91 DLT 602, distinguished

Bhule Ram v. Union of India, Land Acquisition Appeal No. 154 of 2007, order dated 8-12-2009 (Del), affirmed

[641]— Ss. 23, 4 and 6 — Compensation — Computation of — Belting system — Inapplicability — *Finding by High Court that Mussoorie being a hilly place principle of belting system had to be applied since value of land cannot be same for entire 36 acres acquired — Held, in absence of any pleading by State that in all land acquisition proceedings in Mussoorie principle of belting was applied, such finding of High Court which was not based on any evidence but was based on presumption and surmises, is unsustainable — Further held, High Court also erred in rejecting exemplar sale deed as exemplar for entire acquired land, which exemplar pertained to land nearer to Academy for extension of which land was sought to be acquired — Order of Reference Court, restored* (Paras 10 to 12). *Jai Krishan* v. *State of Uttarakhand*, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73: AIR 2014 SC 3578: (2014) 5 CTC 98: (2014) 106 ALR 718: (2014) 142 AIC 245.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Dipak Misra*, JJ. [Date of decision: 1-7-2014]

[642]— Ss. 23, 4 and 6 — Market value — Computation — Comparable sales method — Sale instances — Reliability — Registered sale deeds, authenticity whereof is undisputed — Held, cannot be ignored — *Reference Court as well as High Court erred in discarding majority of registered sale deeds out of 12 sale deeds produced — However, on facts held, Exts. P-2 and P-10 cannot be relied upon since the same were executed after issuance of notification under S. 4 — Evidence Act, 1872, Ss. 74 to 77 and 79 — Registration Act, 1908, Ss. 57 and 60 — Transfer of Property Act, 1882, S. 54* (Paras 25 to 27). *Himmat Singh* v. *State of M.P.*, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496: (2014) 133 AIC 30.

Bench Strength **3**. Coram: **G.S. Singhvi**, *Shiva Kirti Singh* and *Chockalingam Nagappan*, JJ. [Date of decision: 29-11-2013]

[643]— Ss. 23, 4 and 6 — Market value — Computation — Deduction of 1/3rd price towards development costs — When impermissible — *Single Judge fixing base price in consonance with compensation awarded for lands previously acquired in year 1973 and 1977 and calculating market value with increase @ 15% p.a. from 1973 till issuance of Notis. dt. 4-6-1980, 13-3-1981, 22-6-1982 and 5-7-1982 following observations of Supreme Court in* Krishi Utpadan Mandi Samiti, *(2004) 2 SCC 283 — Held, in such circumstances he ought not to have made any deduction towards development costs — Reference Court directed to determine market value of acquired land @ Rs 58.45 per sq yd for lands acquired under 1980 Noti., at Rs 66.21 under 1981 Noti. and Rs 76.21 for lands acquired under 1982 Noti. without deducting 1/3rd price towards development cost — Constitution of India, Art. 300-A* (Paras 12 and 13). *Subhash Chander* v. *State of Haryana*, (2014) 13 SCC 193: (2014) 5 SCC (Civ) 698.

Bench Strength **2**. Coram: *H.L. Dattu* and *Dipak Misra*, JJ. [Date of decision: 19-2-2013]

Krishi Utpadan Mandi Samiti v. Bipin Kumar, (2004) 2 SCC 283, followed

Rajwant Singh v. State of Haryana, (2008) 2 RCR (Civil) 780 (P&H), modified

[644]— Ss. 23, 4, 6 and 17 — Market Value — Determination of — High Court compelling administration to apply circle rates as factor for determining market value of land — Validity of — *Held, no doubt Land Acquisition Officer fixed very low rate as market value of land, still High Court itself ought not to have fixed market value — Land Acquisition Act, 1894 contains comprehensive mechanism for determination of market value — Aggrieved person can avail benefit of reference under S. 18 and appeal under S. 54 of the Act — Power vested with Land Acquisition Officer cannot be controlled by judicial command — In every case Land Acquisition Officer has to determine market value of land by application of objective criteria — Under these circumstances, High Court ought not to have compelled authority to adopt circle rate as market value — Hence, order passed by High Court fixing circle rates as market value was set aside and competent authority was given liberty to fix market value based on relevant factors, including circle rates, and available evidence — Noti. dt. 23-02-2011 would not constitute sole criteria for determining market value — Constitution of India, Art. 226* (Paras 7 and 8). *Govt. (NCT of Delhi)* v. *Ajay Kumar*, (2014) 13 SCC 734: (2014) 5 SCC (Civ) 789.

Bench Strength **2**. Coram: *G.S. Singhvi* and *Chockalingam Nagappan*, JJ. [Date of decision: 23-9-2013]

Ajay Kumar v. Govt. (NCT of Delhi), WP (C) No. 2109 of 2008, order dated 12-5-2011 (Del), reversed

[645]— Ss. 23, 4(1), 16 and 11 — Enhanced compensation — Claim for — Dispossession of

landowners prior to issuance of preliminary notification under S. 4(1) of 1894 Act — Claim for rent/damages for land concerned from the date the possession thereof taken till the date of preliminary notification issued under LA Act, allowed — *Possession of land concerned taken by Municipal Committee on 1-1-1938 for developing it into a park — Due to some dispute between landowners and Municipal Committee, subsequent request by Municipal Committee to State Government to acquire that land under LA Act and thereafter handover the same to Municipal Committee for its use and development — Consequently, acquisition took place under LA Act — Compensation awarded as to said acquisition on basis of market value of land @ Rs 400 per square yard with all other statutory benefits by courts below, held on facts, was proper — But, in view of judgment made in* Madishetti Bala Ramul, *(2007) 9 SCC 650, direction made to State Government to pay rents/damages to landowners @ 15% p.a. on the compensation awarded from the date the landowners were dispossessed till the date of issuance of preliminary notification under LA Act* (Paras 8, 14 and 15). *Tahera Khotoon* v. *LAO*, (2014) 13 SCC 613: (2014) 5 SCC (Civ) 735.

Bench Strength **2**. Coram: *H.L. Dattu* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 27-8-2013]

Madishetti Bala Ramul v. Land Acquisition Officer, (2007) 9 SCC 650, followed

Tahera Khotoon v. Revenue Divl. Officer, AS No. 1799 of 2000, order dated 8-10-2009 (AP), modified

[646]— Ss. 23 and 18 — Compensation — Computation — Comparable sales method — Assessment of market value — Large number of sale instances produced — Highest bona fide exemplar to be relied upon — *Exts. P-4 and P-5 out of the 12 sale instances produced, evidencing that compensation @ Rs 17.86 per square foot was paid to landowners — Hence held, the same can be relied upon for determining compensation in absence of any pleadings or evidence to show that said transactions were not genuine or that vendor and vendee had colluded to inflate value of land with oblique motive — Further held, even if those sale transactions were kept aside, Exts. P-3, P-7 and P-8 could be relied upon for determining market value of acquired land to be between Rs 8 and Rs 8.33 per square foot — By applying rule of averaging, same would be Rs 8.93 (rounded of to Rs 9) per square foot — But considering that appellants had limited their claim to Rs 5 per square foot, compensation at rate of Rs 5 per square foot granted, with interest on solatium and other statutory benefits* (Paras 31, 39, 40 and 42). *Himmat Singh* v. *State of M.P.*, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496: (2014) 133 AIC 30.

Bench Strength **3**. Coram: **G.S. Singhvi**, *Shiva Kirti Singh* and *Chockalingam Nagappan*, JJ. [Date of decision: 29-11-2013]

[647]— Ss. 23, 18 and 54 — Compensation — Determining factors — Cumulative increase in market value — Consideration of — *High Court fixed compensation lower than that fixed by Reference Court — High Court though took into consideration earlier sale deeds of neighbouring areas of small plots, did not take into consideration developmental increase in value of land since past 23 yrs with regard to large area that has been acquired — High Court also did not grant damages for standing crops — High Court determined compensation at rate of Rs 100 per decimal as against Rs 250 per decimal fixed by Reference Court as the two lands are non-comparable — Reiterated, cumulative increase of 10% to 15% is permissible with reference to acquisitions in 1990 while in decades preceding 1990s quantum of increase can be taken around 8-10% p.a.* (Paras 16 and 17). *Ahsanul Hoda* v. *State of Bihar*, (2013) 14 SCC 59: (2014) 2 SCC (Civ) 406: AIR 2013 SC 3463: (2013) 99 ALR 895: (2013) 128 AIC 22: (2013) 116 Cut LT 1092.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 1-7-2013]

[648]— Ss. 23, 18 and 54 — Compensation — Development potential of land — *LAC granting compensation in three categories and Reference Court enhancing compensation in two categories — Held, taking general note of particulars of acquisition and nature of land and considering fact that acquired lands of all appellants are situate in same district as in* Ashrafi, *(2013) 5 SCC 527, following said judgment, enhancement of compensation and other benefits allowed in the same terms* (Paras 12 to 14). *Kashmir Singh* v. *State of Haryana*, (2014) 2 SCC 165: (2014) 1 SCC (Civ) 672: (2014) 3 Mah LJ 232: (2014) 2 MPLJ 310: (2014) 102 ALR 469: (2014) 134 AIC 226.

Bench Strength **2**. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 13-12-2013]

Ashrafi v. State of Haryana, (2013) 5 SCC 527: (2013) 3 SCC (Civ) 169, applied

Narinder Kumar v. State of Haryana, RFA No. 1876 of 2006, decided on 20-9-2010 (P&H), reversed

[649]— Ss. 23, 18 and 54 — Market value — Determination of — Acquisition of large tract of land for industrial purpose — Potentiality and exemplars of small portion of land — Relevancy of — Reference court enhancing market value considering potentiality and exemplars of neigh-

bouring land prior to acquisition notification — High Court restoring award passed by Collector — Untenability of — *Held, land had been acquired for industrial/commercial purpose — Thus land got potential for development — Acquired land and lands sold prior to preliminary notification had similar characteristics, topography — Acquired land situated very near to residential locality and near highway — Reference court rightly accepted this evidence in determining market value — Land Acquisition Officer casually fixed market value without considering relevant facts — High Court erred in interfering with award of reference court without assigning any reasons — Hence, award of reference court restored — Further, direction issued to pay compensation amount within weeks — Words and Phrases — "Potentiality" — Meaning of — Maharashtra Industrial Development Act, 1961 (3 of 1962), S. 34*

The respondent acquired land for industrial purpose in favour of Respondent 3, that is, Maharashtra Industrial Development Corporation (MIDC) by publishing notification on 07-9-1991 and final notification was published on 12-7-1992. The Special Land Acquisition Officer awarded compensation at Rs 50,000 per hectare. The appellant landowners sought reference under Section 34 of the Maharashtra Industrial Development Act, 1961 for enhancement of compensation by redetermining the market value. Considering the evidence placed on record, the Reference Court determined the market value of acquired land at Rs 5 per square feet with all statutory benefits. In the appeal preferred by the respondents, the High Court set aside the award of the Reference Court and restored the award passed by the Special Land Acquisition Officer. Hence this appeal.

Allowing the appeal,

Held :

It is settled law that while fixing the market value of the acquired land, the Land Acquisition Collector is required to keep in mind the following factors:

(*i*) Existing geographical situation of the land.

(*ii*) Existing use of the land.

(*iii*) Already available advantages, like proximity to National or State Highway or road and/or developed area.

(*iv*) Market value of other land situated in the same locality/village/area or adjacent or very near the acquired land.

Further, Section 23 of the Land Acquisition Act, 1894 specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under Section 4(1).

One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered. (Para 16.3)

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, uses to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. (Para 16.4)

The appellant landowners have rightly placed strong reliance upon the sale instances of small plots which are formed in the New Venkateshnagar Layout which instances are all after the preliminary notification under Section 4 of the Land Acquisition Act, 1894. The Reference Judge has rightly placed reliance upon the said sale instances for comparison and held that the acquired land is comparable to the plots covered in the sale deeds referred to, as it has acquired non-agricultural potentiality and the acquired land is situated in the near proximity to the plots covered in the sale deeds. (Para 10)

That the acquisition of the land is for commercial purpose should be the relevant criterion for determining the market value by both the Land

Acquisition Officer and the Reference Court placing reliance upon the sale instances even in relation to small plots of land, though it is shown from the records that the acquired land on the date of notification is an agricultural land. But the acquired land has got non-agricultural potentiality as the said land was proposed by the District Collector after identifying the land for acquisition and stated that it is suitable for the purpose of industrial development. (Para 20)

In the criteria for the determination of the market value, the potentiality of the acquired land should also be taken into consideration which has been explained stating that potentiality means capacity or possibility for changing or developing into a state of actuality. The various criteria laid down, namely, the existing amenities like water, electricity, possibility of their further extension, whether nearabout the acquired land, town is developing or has prospect of development in future, have to be taken into consideration by both the Land Acquisition Collector and the courts for determination of the market value. The aforesaid advantages are very much abundantly available in respect of the acquired land as the said land is within the proximity of New Venkateshnagar Layout, wherein residential sites are formed, and it is on record and there is a school and college near the highway. (Para 21)

The findings of fact and reasons recorded by the Reference Court in determining the market value of the acquired land were well founded and the same were based on facts, and cogent and legal evidence adduced on record by the appellant landowners. The same had been rightly accepted by the learned Reference Judge after having noticed that the Land Acquisition Officer in a casual manner rejected the claim of the appellant landowners and determined the meagre sum of Rs 50,000 per hectare as the market value of the land which was unrealistic and contrary to the legal evidence on record and the law laid down by the Supreme Court. The findings of fact recorded by the Reference Judge on the relevant issue had been erroneously set aside by the High Court without assigning valid reasons. Therefore, reversing the judgment and award of the Reference Court was not only erroneous on facts but was also erroneous in law. (Para 23)

Since the award of the Reference Court was affirmed, having regard to the undisputed fact that this acquisition was of more than 23 years, it would be just and proper to direct Respondent 3 MIDC to issue the demand draft in favour of the appellant landowners or their legal representatives or deposit the same in their bank accounts within six weeks from the date of receipt of a copy of this judgment and submit the compliance report before the Reference Court. (Para 24). *Digamber* v. *State of Maharashtra*, (2013) 14 SCC 406: (2014) 2 SCC (Civ) 763: AIR 2013 SC 3532: (2013) 100 ALR 393: (2013) 129 AIC 82.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 1-8-2013]

Sabhia Mohammed Yusuf Abdul Hamid Mulla v. Land Acquisition Officer, (2012) 7 SCC 595: (2012) 4 SCC (Civ) 290; Viluben Jhalejar Contractor v. State of Gujarat, (2005) 4 SCC 789; Atma Singh v. State of Haryana, (2008) 2 SCC 568: (2008) 1 SCC (Civ) 621, applied

Nama Padu Huddar v. State of Maharashtra, 1994 BCJ 316; State of Maharashtra v. Ramchandra Damodar Koli, (1997) 2 Mah LR 325, held, approved

State of Maharashtra v. Digamber Apparao Deshmukh, First Appeal No. 646 of 1998, decided on 5-10-2005 (Bom), reversed

[650]— Ss. 23, 23(1-A), 4 and 6 — Compensation — Computation of — Mandate of S. 23(1-A) — Non-compliance — Effect — *On facts held, High Court erred in not noticing that provisions of S. 23(1-A) are mandatory and appellant claimants are entitled to 12% enhanced compensation for period commencing from date of publication of notification under S. 4 — Respondents directed to pay 12% enhanced compensation in terms of S. 23(1-A) — Constitution of India, Art. 300-A* (Paras 14, 15 and 18 to 20). *Jai Krishan* v. *State of Uttarakhand*, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73: AIR 2014 SC 3578: (2014) 5 CTC 98: (2014) 106 ALR 718: (2014) 142 AIC 245.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Dipak Misra*, JJ. [Date of decision: 1-7-2014]

[651]— Ss. 23, 23(1-A), 23(2) and 28 — Interest on solatium amount — Awarded (Paras 14 and 15). *Subhash Chander* v. *State of Haryana*, (2014) 13 SCC 193: (2014) 5 SCC (Civ) 698.

Bench Strength **2**. Coram: *H.L. Dattu* and *Dipak Misra*, JJ. [Date of decision: 19-2-2013]

Sunder v. Union of India, (2001) 7 SCC 211, followed

[652]— Ss. 23, 23(1-A), 23(2) and 28 — Market Value — Consistency in judicial determination and application — *Most of subject lands acquired were under consideration in* Subhash Chander, *Civil Appeal No. 2187 of 2013, decided on 19-2-2013 (SC) [reported at (2014) 13 SCC 193], wherein market value of land acquired in 1980 was determined at Rs 58.45 per sq yd, year 1981 at Rs 66.21 per sq yd and year 1982 at Rs 76.21 per sq yd (increase of 15% per year) — Hence held, same market value would be applied to land acquired under Notis. dt. 4-6-1980, 13-3-1981, 22-6-1982 and 5-7-1982 — As far as acquisition of subject lands acquired under Noti. dt. 10-2-1983 is con-*

cerned, annual increase for a fraction of year would not be ordinarily just for determination of market value — Besides, except for fact that subject lands acquired under Noti. dt. 10-2-1983 was for large tract of land and happened to fall in municipal area there was not much difference in potentiality of land acquired under Noti. dt. 5-7-1982 — Hence, market value of land acquired under Noti. dt. 10-2-1983 must have parity with market value of land acquired under Noti. dt. 5-7-1982 i.e. Rs 76.21 per sq yd — Appellants approaching Court beyond one year of impugned judgment not entitled to any interest for period of delay — Appellants entitled to statutory benefits on enhanced compensation (Paras 7 to 10). *Ranjit Singh* v. *State of Haryana*, (2014) 13 SCC 187: (2014) 5 SCC (Civ) 692: (2014) 142 AIC 214.

Bench Strength 3. Coram: **R.M. Lodha, C.J.** and *Jasti Chelameswar* and *Dr A.K. Sikri*, JJ. [Date of decision: 31-7-2014]

Subhash Chander v. State of Haryana, (2014) 13 SCC 193, followed

[653]— Ss. 23, 28 and 48 — Compensation for incomplete acquisition — Rental compensation — Appropriation rule for compensation — Rental compensation based on the award before formal acquisition — Justification of — *State Government by its resolutions provided for rental compensation to land owners @ 8% of compensation awarded by Land Acquisition Officer prior to formal acquisition — Award enhanced by Reference Court which is under challenge in first appeal — State refused to give rental compensation on enhanced award as it was under challenge — Held, during pendency of a reference proceeding or appeal before a higher court, rental compensation is to be determined on basis of award passed by Land Acquisition Officer and it be redetermined consequent to the latter decision — Held, it was not open to High Court to direct authorities to pay rental compensation as per enhanced award passed by Reference Court — High Court rightly recalled its earlier order and rightly permitted appellant to withdraw only half of the amount — No interference is warranted — However held, appellant is entitled to claim proportionate higher rental compensation, if compensation so upheld or further enhanced in appeal — Constitution of India, Arts. 300-A and 14*

State Government took in possession of land through private negotiations with landowners to speed up development work pending formal acquisition on the payment of rental compensation. Payment of rental compensation on award till the formal acquisition of the land was enhanced from 4 per cent to 8 per cent by the State Government resolutions from time to time. The award was enhanced by the Reference Court. The State challenged the same and refused enhanced compensation to the appellant. Following rejection of application for the rental compensation on the enhanced amount, appellant preferred a writ before the High Court. The High Court directed deposit of rental compensation at the rate of 8 per cent on amount of award enhanced by the Reference Court and permitted appellant to withdraw only fifty percent thereof. Hence, the present appeal.

Dismissing the appeal,

Held :

The State of Maharashtra by its Resolutions and Instructions, contained in the Circulars dated 1-12-1972, 17-9-1977, 2-4-1979 and 24-3-1988 provided for rental compensation, payable to the title-holders of the lands. Apart from those resolutions, the provisions of the Land Acquisition Act, 1894 do not contemplate payment of any rental compensation. (Para 17)

From the decision of the Supreme Court in *Maimuma Banu*, (2003) 7 SCC 448, it is clear that during the pendency of a reference proceeding or appeal before a higher court the rental compensation is to be determined on the basis of award passed by the Land Acquisition Officer. Subsequently, if there is upward revision of amount, consequences will follow and if necessary, redetermination of the rental compensation can be made and after adjustment of the amount paid, if any, balance can be paid. (Para 18)

In the present case, the State Government along with the appellant was not satisfied with the award passed by the Reference Court and hence, two appeals against the said award by both parties are pending before the High Court of Bombay, Nagpur Bench for determination. Giving reference to the decision in *Maimuma Banu case*, it was not open to the High Court to direct the authorities to pay rental compensation as per award passed by the Reference Court. For the reason aforesaid, if the High Court recalled the order dated 5-10-2010 and directed the State Government to deposit rental compensation at the rate of 8 per cent of the amount awarded by the Reference Court with the appellate court, allowing the appellant to withdraw half of the amount, no interference is called for. However, this order will not stand in the way of the appellant to claim proportionate higher rental compensation, if the order of the Reference Court is upheld or further enhancement of compensation is made by the appellate court. (Para 19). *Kazi Akiloddin*

Sujaoddin v. *State of Maharashtra*, (2013) 14 SCC 8: (2014) 2 SCC (Civ) 436: AIR 2013 SC 2903: (2013) 100 ALR 12: (2013) 128 AIC 142.

Bench Strength **2**. Coram: *T.S. Thakur* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 3-7-2013]

State of Maharashtra v. Kazi Akiloddin Sujaoddin, MCA No. 774 of 2011, order dated 15-9-2011 (Bom), affirmed

[654]— Ss. 23, 34 and 30(1) & (2) as amended w.e.f. 24-9-1984 — Enhancement of solatium and interest where awards of Collector and Reference Court passed prior to amendment — *Following* Swaran Singh, *(1996) 5 SCC 501 and* Sarup Singh, *(2011) 11 SCC 198, held, legal position is no more res integra that an award and decree becoming final under the LA Act cannot be amended or altered seeking enhancement of the statutory benefits under the amended provisions in the LA Act by filing petitions under Ss. 151 and 152 CPC — CPC, 1908, Ss. 151 and 152* (Para 20). *State of Haryana* v. *Kartar Singh*, (2013) 11 SCC 375: (2014) 1 SCC (Civ) 527: (2013) 96 ALR 701: (2013) 122 AIC 232: (2013) 1 LW 675.

Bench Strength **2**. Coram: **R.M. Lodha** and *Anil R. Dave*, JJ. [Date of decision: 29-11-2012]

Union of India v. Swaran Singh, (1996) 5 SCC 501; Sarup Singh v. Union of India, (2011) 11 SCC 198: (2011) 3 SCC (Civ) 640, followed

— **S. 23(1-A)** *See also* S. 23

[655]— Ss. 23(1-A) & (2) — Compensation — Determination — Reliance on judgment of Supreme Court — *Instant case being squarely covered by* Bali Ram Sharma case, *(2004) 6 SCC 533 compensation awarded by High Court to tune of Rs 345 per square yard in addition to other statutory benefits reduced to Rs 76,550 per bigha with 10% acceleration and other available statutory benefits — Claimants also entitled to claim interest on solatium for permissible period* (Paras 9 to 11). *Union of India* v. *Dhiraj*, (2011) 15 SCC 507: (2014) 2 SCC (Civ) 628: (2011) 112 Cut LT 607: (2011) 86 ALR 448: (2011) 101 AIC 41.

Bench Strength **2**. Coram: *A.K. Ganguly* and **Swatanter Kumar**, JJ. [Date of decision: 19-4-2011]

DDA v. Bali Ram Sharma, (2004) 6 SCC 533, applied

Anil Kumar Sharma v. Union of India, (2000) 86 DLT 825, held, overruled

— **S. 23(2)** *See* S. 23; S. 23(1-A)

— **S. 24** *See* S. 18

— **S. 28** *See also* S. 23

[656]— Ss. 28, 23, 18, 4 and 6 — Enhanced compensation deposited in court after expiry of period of one year — Hence held, appellant claimants entitled to interest @ 15% p.a. under proviso to S. 28 — *Constitution of India, Art. 300-A* (Paras 16 to 20). *Jai Krishan* v. *State of Uttarakhand*, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73: AIR 2014 SC 3578: (2014) 5 CTC 98: (2014) 106 ALR 718: (2014) 142 AIC 245.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Dipak Misra*, JJ. [Date of decision: 1-7-2014]

— **S. 28-A** *See also* LIMITATION — 'Condonation of Delay', (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

[657]— S. 28-A — Directions under — Enhancement of compensation — Non-availability of such provision under J&K Requisitioning and Acquisition of Immovable Property Act, 1968 — *High Court under writ jurisdiction invoking S. 28-A of 1894 Act, directed State to refer any application if preferred seeking enhancement of compensation to arbitrator to be adjudicated in accordance with law — Sustainability — Held, aforesaid directions were not inconsistent with provisions of S. 8 of the J&K 1968 Act — SLP dismissed with costs — J&K Requisitioning and Acquisition of Immovable Property Act, 1968 (15 of 1968), S. 8* (Paras 4 and 7)

Dismissing the SLP with costs, the Supreme Court held as above

Held :

The direction of the High Court is referable to the provisions contained in Section 8 of the 1968 Act and it was for this reason that the High Court in the above direction firstly observed that question as to whether the petitioners had submitted an application for appointment of an arbitrator and whether they accepted the decision was a disputed question of fact as the above facts were not admitted before the High Court and then the High Court gave a limited direction to the respondent State to refer the application *if preferred by the petitioners* (emphasis supplied) seeking enhancement of the compensation to the arbitrator and these applications *if preferred* (emphasis supplied) would be adjudicated upon in accordance with law. The above direction of the High Court, by no stretch of imagination, can be said to be inconsistent with the provisions of Section 8 of the 1968 Act. The above direction does not deserve to be deleted. (Para 7). *Union of India* v. *Krishan Dass*, (2012) 13 SCC 690: (2014) 5 SCC (Civ) 673.

Bench Strength **2**. Coram: *R.M. Lodha* and *H.L. Gokhale*, JJ. [Date of decision: 16-3-2012]

[658]— Ss. 28-A and 18 — Re-determination of compensation by Collector under S. 28-A — Whether barred by limitation — *Limitation for filing application under S. 28-A being 3 months from date of award — Party applying for certified copies and obtaining them within five days — But party filing application under S. 28-A after 3 months 15 days from date of award (if 5 days time is*

excluded as per S. 28-A(1) proviso, then the delay was 10 days) — Considering: (a) that land acquisition Collector is not a court but a quasi-judicial body, and (b) that the principle of limitation starting from date of knowledge of award being applicable only to S. 18 and not to S. 28-A and that there were no precedents which directly applied the said principle to S. 28-A — Appellants were claiming this benefit as they were not parties to the reference in which the award concerned was made — Held, appellants barred by limitation from applying under S. 28-A — Therefore, the order of Collector not interfered with

The reference under Section 18, LA Act to which appellant landowners were not parties was decided on 3-4-2006. The appellants applied for certified copies on 29-5-2006 and obtained the same on 3-6-2006. The application for re-determination of compensation was filed on 18-7-2006. The Land Acquisition Collector rejected it on ground of limitation. The High Court by the impugned judgment upheld the decision of the Land Acquisition Collector.

The appellant landowners argued that Section 28-A, LA Act is a beneficial legislation and that limitation should begin from date of knowledge of the award by Reference Court under Section 18, LA Act. And that as they were not parties to the reference under Section 18, the limitation under Section 28-A should not begin from date of award by Reference Court.

Dismissing the appeals,

Held :

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. (Paras 16 and 17)

As the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application under Section 28-A, LA Act, has to be filed within the period of limitation as prescribed under Section 28-A, LA Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. (Paras 13 to 15 and 5). *Popat Bahiru Govardhane* v. *Land Acquisition Officer*, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149: (2013) 100 ALR 657: (2013) 130 AIC 97: (2014) 2 Mah LJ 527: (2013) 6 Mah LJ 950: (2014) 2 MPLJ 3: (2013) 5 LW 700: (2014) 1 Cal LT 36.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

Popat Bahiru Govardhane v. Land Acquisition Officer, (2012) 3 Mah LJ 390: (2012) 2 Bom LR 955, affirmed

State of A.P. v. Marri Venkaiah, (2003) 7 SCC 280, followed

Bhagwan Das v. State of U.P., (2010) 3 SCC 545: (2010) 1 SCC (Civ) 776; Premji Nathu v. State of Gujarat, (2012) 5 SCC 250: (2012) 3 SCC (Civ) 52; Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, distinguished

— S. 30 *See* S. 18; S. 18(2)

— Ss. 30(1) & (2) as amended w.e.f. 24-9-1984 *See* S. 23

— S. 31 *See also* S. 18

— Ss. 31 to 33 *See* 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Ss. 24(1) & (2), (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274

— Ss. 31 to 34, 11 and 12 *See* (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274

— S. 34 *See* S. 23

— S. 48 *See also* S. 16; S. 23

[659]— S. 48 — Withdrawal from acquisition — Must be preceded by a notification in the Official Gazette and a proper hearing to the beneficiary affected by such withdrawal is necessary

Partly modifying the High Court judgment and dismissing the appeals,

Held :

These writ petitions were filed by the respondent APMC challenging the Order dated 20-5-1998 passed by the then Minister of Revenue, Government of Maharashtra, directing deletion of the disputed land from acquisition. The High Court has rightly quashed the order passed by the Minister and correctly held that APMC, the beneficiary of the acquisition was not given a fair hearing by the Minister before directing the withdrawal of the acquisition proceedings. It was rightly held by the High Court that such a hearing was essential having regard to the nature of the power exercised by the State Government under Section 48 of the Land Acquisition Act and the decisions rendered by the Supreme Court while interpreting the said

provision. The High Court rightly declared that a withdrawal that is not notified in the Official Gazette was ineffective and non est in the eye of the law. (Para 25)

The question whether withdrawal of acquisition must be notified in terms of Section 48 of the Land Acquisition Act is no longer res integra. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken. The High Court was also right in holding that as no such publication in the instant case rendered the withdrawal order non est in the eye of the law. (Paras 29 and 30)

Coming then to the question whether the exercise of power under Section 48 of the Land Acquisition Act required compliance with the principles of natural justice and consequently a hearing to the beneficiary affected by such withdrawal, although such a requirement is not in specific words incorporated in Section 48 of the Act. That does not, however, make any material difference because the law is well settled that if a statutory provision could be read consistently with the principles of natural justice, the courts would prefer do so. That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles. In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice. Was a proper hearing given to APMC, the beneficiary in the instant case, is the other aspect that needs to be considered at this stage. The High Court has examined that aspect and concluded that the hearing was no more than an eyewash. There is no flaw in the above reasoning and conclusion leave alone any perversity to call for interference. The obligation to hear existed but was not satisfactorily discharged by the Minister while taking a decision in the matter, which is by itself sufficient to vitiate the action taken by him independent of the fact that any order directing withdrawal of acquisition ought to have culminated into a proper notification and published in the Official Gazette. (Paras 34 and 35)

The High Court next examined the correctness of the reasons given in the order of withdrawal passed by the Minister and found that the same were wholly unsustainable. The High Court was perfectly justified in holding that the order passed by the Minister lacked objectivity and was hasty without due and proper consideration of the relevant circumstances and the material on record. The order passed by the Minister directing withdrawal of the acquisition proceedings was bad not only because it was arbitrary, lacked objectivity and ignored the material on record but also because the said order was passed without offering to APMC a fair and reasonable opportunity of being heard in the matter. That the order was not notified was only an additional reason that rendered the order legally unsupportable which the High Court rightly quashed. (Paras 35 to 39). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

Prakash Vasudev Deodhar v. State of Maharashtra, (1993) 2 Mah LJ 1768, approved

— Ss. 48, 4 and 6 *See* CONSTITUTION OF INDIA, Arts. 300-A, 14, 226 and 136, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671

[660]— Ss. 48, 4, 6, 16 and 17(1) & (4) — Withdrawal from acquisition after possession had been taken under S. 16 of 1894 Act — Impermissibility — *Land notified under S. 4, S. 6 declaration made and when award made not paid, High Court directing release of amount of compensation — References decided and in executing court objection filed by State that land no longer required — High Court after examining facts/record of case came to conclusion that possession had been taken, mutation made, showing land use as for establishment of Court Complex — Held, it is a settled legal proposition that once possession of land is taken by State under S. 16, land vests in State free from all encumbrances — State loses its power to denotify land under S. 48 — There is no room for doubt that possession had been taken and in such a fact situation it was not permissible for State to exercise its power under S. 48 of the Act* (Paras 6 and 7). *Financial Commr. (Revenue) & Secy.* v. *Gurkirpal Singh*, (2014) 13 SCC 802: (2014) 5 SCC (Civ) 802.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *V. Gopala Gowda*, JJ. [Date of decision: 5-8-2013]

Gurkirpal Singh v. Govt. of Punjab, (2008) 151 PLR 740: (2008) 3 RCR (Civ) 498, affirmed

[661]— Ss. 48(1), 4 and 6 — Withdrawal from acquisition — Withdrawal notification not published in Official Gazette and beneficiary of acquisition not given an opportunity of being heard by Minister concerned before issuance of direction for withdrawal — Withdrawal, held, rightly quashed by High Court on grounds that

withdrawal of the acquisition proceedings was invalid due to non-publication of withdrawal notification and non-observance of principles of natural justice and improper exercise of power under S. 48 — *Held, when Ss. 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications — A fresh and separate proper notification in Official Gazette is required to be issued if State Government decides to withdraw from the acquisition under S. 48, of any land of which possession has not been taken — Further, the exercise of power under S. 48 required compliance with principles of natural justice and consequently a hearing to the beneficiary of acquisition affected by such withdrawal was necessary — Hence, the obligation to give a proper hearing existed but was not satisfactorily discharged by Minister concerned while taking a decision in the matter, which is by itself sufficient to vitiate the action taken by Minister concerned independent of the fact that any order directing withdrawal of acquisition ought to have culminated into a proper notification and published in the Official Gazette — Hence, held, withdrawal order rightly quashed by High Court — However, inference of High Court attributing mala fides to Minister concerned simply because withdrawal order passed by him was found to be untenable in law, not justified — Suspicion, however strong cannot be proof of mala fides — Standard of proof on which a court could strike down an action on ground of mala fides was not satisfied in instant case — Hence, High Court's order, to the extent it held the action of Minister concerned to be mala fide, modified — Costs assessed at Rs 5,00,000 to be paid by Appellant 1, developer to beneficiary of acquisition — Maharashtra Regional and Town Planning Act, 1966 (37 of 1966), S. 126(2)*

Partly modifying the High Court judgment and dismissing the appeals,

Held :

These writ petitions were filed by the respondent APMC challenging the Order dated 20-5-1998 passed by the then Minister of Revenue, Government of Maharashtra, directing deletion of the disputed land from acquisition. The High Court has rightly quashed the order passed by the Minister and correctly held that APMC, the beneficiary of the acquisition was not given a fair hearing by the Minister before directing the withdrawal of the acquisition proceedings. It was rightly held by the High Court that such a hearing was essential having regard to the nature of the power exercised by the State Government under Section 48 of the Land Acquisition Act and the decisions rendered by the Supreme Court while interpreting the said provision. The High Court rightly declared that a withdrawal that is not notified in the Official Gazette was ineffective and non est in the eye of the law. (Para 25)

The question whether withdrawal of acquisition must be notified in terms of Section 48 of the Land Acquisition Act is no longer res integra. When Sections 4 and 6 notifications are issued, much has been done towards the acquisition process and that process cannot be reversed merely by rescinding those notifications. A notification in the Official Gazette is required to be issued if the State Government decides to withdraw from the acquisition under Section 48 of the Act of any land of which possession has not been taken. The High Court was also right in holding that as no such publication in the instant case rendered the withdrawal order non est in the eye of the law. (Paras 29 and 30)

Coming then to the question whether the exercise of power under Section 48 of the Land Acquisition Act required compliance with the principles of natural justice and consequently a hearing to the beneficiary affected by such withdrawal, although such a requirement is not in specific words incorporated in Section 48 of the Act. That does not, however, make any material difference because the law is well settled that if a statutory provision could be read consistently with the principles of natural justice, the courts would prefer do so. That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles. In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice. Was a proper hearing given to APMC, the beneficiary in the instant case, is the other aspect that needs to be considered at this stage. The High Court has examined that aspect and concluded that the hearing was no more than an eyewash. There is no flaw in the above reasoning and conclusion leave alone any perversity to call for interference. The obligation to hear existed but was not satisfactorily discharged by the Minister while taking a decision in the matter, which is by itself sufficient to vitiate the action taken by him independent of the fact that any order directing withdrawal of acquisition ought to have culminated into a proper notification and published in the Official Gazette. (Paras 34 and 35)

The High Court next examined the correctness of the reasons given in the order of withdrawal passed by the Minister and found that the same were wholly unsustainable. The High Court was perfectly justified in holding that the order passed by the Minister lacked objectivity and was hasty without due and proper consideration of the relevant circumstances and the material on record. The order passed by the Minister directing withdrawal of the acquisition proceedings was bad not only because it was arbitrary, lacked objectivity and ignored the material on record but also because the said order was passed without offering to APMC a fair and reasonable opportunity of being heard in the matter. That the order was not notified was only an additional reason that rendered the order legally unsupportable which the High Court rightly quashed. (Paras 35 to 39)

The High Court has held the action of the Minister to be actuated by mala fides. Inasmuch as the Minister passed an order without affording a fair hearing to APMC, the beneficiary of the acquisition and on grounds that were untenable, the Minister did so under the influence of the builder observed the High Court. The law regarding pleading and proof of "malice in fact" or mala fides as it is in common parlance described is indeed settled. The requirement is that allegations suggesting "malice in fact" to be specific and supported by necessary particulars. Vague and general averments to the effect that the action under review was taken mala fide would not therefore suffice. The burden to establish that the action under challenge was indeed mala fide rests heavily upon the person making the charge; which is taken as quasi-criminal in nature and can lead to adverse consequence for the person who is proved to have acted mala fide. There is in fact a presumption that the public authority acted bona fide and in good faith. That presumption can no doubt be rebutted by the person making the change but only on cogent and satisfactory proof whether direct or circumstantial or on admitted facts that may support an inference that the action lacked bona fides and was for that reason vitiated. The third principle equally sanctified by judicial pronouncements is that the person against whom the charge is made must be impleaded as a party to the proceedings and given an opportunity to refute the charge against him. (Paras 40 and 42)

The charge of mala fides levelled against the appellant, the then Minister was not supported by any particulars. The writ petition filed by APMC did not provide specific particulars or details of how the decision taken by the Minister was influenced by the developer or by any other person for that matter. Such allegations were insufficient to hold the charge of "malice in fact" levelled against the Minister proved. It is trite that every action taken by a public authority even found untenable cannot be dubbed as mala fide simply because it has fallen short of the legal standards and requirements for an action may continue to be bona fide and in good faith no matter the public authority passing the order has committed mistakes or irregularities in procedures or even breached the minimal requirements of the principles of natural justice. The High Court has attributed to the Minister mala fides simply because the order passed by him was found to be untenable in law. Such an inference was not justified, no matter the circumstances enumerated by the High Court may have given rise to a strong suspicion that the Minister acted out of extraneous considerations. Suspicion, however strong cannot be proof of the charge of mala fides. It is only on clear proof of high degree that the court could strike down an action on the ground of mala fide which standard of proof was not satisfied in the instant case. To the extent the High Court held the action of the Minister to be mala fide, the impugned order would require correction. (Paras 48 to 51). *Mutha Associates* v. *State of Maharashtra*, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641.

Bench Strength **2**. Coram: **T.S. Thakur** and *M.Y. Eqbal*, JJ. [Date of decision: 4-7-2013]

Prakash Vasudev Deodhar v. State of Maharashtra, (1993) 2 Mah LJ 1768, approved

— S. 53 *See* CIVIL PROCEDURE CODE, 1908, S. 114 r/w S. 53, Land Acquisition Act, 1894, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

— S. 54 *See* S. 5-A; S. 18; S. 23

See also LIMITATION — 'Limitation Act, 1963', S. 5, (2014) 11 SCC 351: (2014) 4 SCC (Civ) 113

— S. 54 — Appeal before High Court — Compensation — Enhancement of *See* 'Land Acquisition Act, 1894', S. 23, (2013) 11 SCC 426: (2014) 1 SCC (Civ) 563

[662]— Ss. 54, 4(1), 5-A(1), 5-A(2) and 6(1) — Challenge to acquisition — Remand — High Court failing to consider any of the substantive grounds raised by appellant challenging the acquisition — Matter remanded to High Court for consideration afresh — *Further held, letter written by Additional Director, Urban Estates to Advocate General stating that land of appellant was required for commercial sector could not be made sole basis for non-suiting appellant who had purchased land almost 24 years prior to initiation of acquisition proceedings and deposited Rs 28 lakhs towards development charges — Constitution of India, Arts. 300-A, 136 and 226* (Paras 6 and 7). *Vivek Coop. House Building Society Ltd.* v.

State of Haryana, (2013) 11 SCC 653: (2014) 1 SCC (Civ) 229.

Bench Strength 2. Coram: *G.S. Singhvi* and *H.L. Gokhale*, JJ. [Date of decision: 11-2-2013]

Vivek Coop. House Building Society Ltd. v. State of Haryana, CWP No. 9718 of 2009, order dated 21-2-2011 sub nom Sant Singh v. State of Haryana, CWP No. 9888 of 2010 (P&H), reversed

[663]— **Ss. 54, 18 and 23 — Appeal against award under S. 18 — Evidence** — *Held, observations made by High Court in the impugned judgment that there is absolutely no evidence to prove that the acquired land is irrigated land is ex facie erroneous — Impugned judgment is set aside and case remanded to Reference Court for redetermination of market value allowing additional evidence — Constitution of India, Arts. 300-A and 136* (Paras 6 to 8). *Satyanarayana* v. *Bhu Arjan Adhikari*, (2011) 15 SCC 133: (2014) 2 SCC (Civ) 350: AIR 2012 SC Supp 594.

Bench Strength 2. Coram: *G.S. Singhvi* and *A.K. Ganguly*, JJ. [Date of decision: 18-4-2011]

Ujjain Vikas Pradikaran v. Manubai, First Appeal No. 101 of 1993, decided on 16-6-2008 (MP), reversed

[664]— **Ss. 54 and 23 — Compensation — Enhancement of — Discrimination amongst landowners by High Court and non-consideration of material evidence for determination of market value — Unsustainability of** — *Held, High Court differentiated between landowners while enhancing compensation — Further, High Court blindly granted annual increase of 12% after gap of 7 yrs and 3 months — High Court relied on Ext. P-38 for fixing market value and for grant of annual increase at 15% and additional 30% as special location advantage for one particular landowner — It did not, however, rely on same evidence in respect of other landowners and granted annual increase at 12% — Thus, High Court discriminated between landowners — High Court did not properly appreciate evidence Ext. PW 9/A placed before it while determining market value — Had that been considered then market value would have been much higher — Therefore, there was infirmity in conclusions drawn by High Court — Hence, compensation determined by High Court set aside and matter remanded for reconsideration after landowners were paid compensation amount with statutory benefits — Other contesting parties given liberty to implead themselves before High Court — Constitution of India, Arts. 226, 300-A and 14* (Paras 29 to 33). *Haryana State Industrial Development Corpn. Ltd.* v. *Udal*, (2013) 14 SCC 506: (2014) 2 SCC (Civ) 780: AIR 2013 SC 3111: (2013) 116 Cut LT 1072.

Bench Strength 2. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 2-7-2013]

Madan Pal v. State of Haryana, RFA No. 2373 of 2010, decided on 11-2-2011 (P&H), reversed

8. MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966 (37 OF 1966)

— **S. 126** *See* 'Land Acquisition Act, 1894', Ss. 3(f), 4 and 6, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— **S. 126(2)** *See* 'Land Acquisition Act, 1894', Ss. 48(1), 4 and 6, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

9. RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

[665]— **Ss. 24(1) & (2) — Lapse of acquisition proceedings initiated under 1894 Act, where "compensation has not been paid to landowners" and award was made 5 yrs or more prior to commencement of 2013 Act — Expression "compensation has not been paid" occurring in S. 24(2) — "Paid" — Import of — Deposit of compensation amount in Government treasury, held, not enough** — *Held, for purposes of S. 24(2) compensation shall be regarded as "paid" if compensation is actually tendered to landowners/interested persons, or, is offered to interested persons and on their refusal to accept the same such compensation is deposited in court — Expression "paid" used in S. 24(2) includes deposit of compensation in court, and cannot be limited to mean "offered" or "tendered" to landowners/persons interested, and neither can receipt of compensation by landowners/persons interested be inferred as the only meaning thereof — If literal construction is given to expression "paid", then it would amount to ignoring the procedure, mode and manner of deposit of compensation in court as provided in S. 31(2) of 1894 Act when landowners/interested persons refuse to accept compensation — In instant case, amount of compensation was deposited in Government treasury on 31-1-2008 which is not equivalent to "compensation paid to landowners/persons interested" and award had been made more than 5 yrs previously — Thus, subject land acquisition proceedings had lapsed — Land Acquisition Act, 1894, Ss. 31 to 33 — Constitution of India, Arts. 300-A and 19(1)(f) — Words and Phrases — "Paid"* (Paras 12 to 20). *Pune Municipal Corpn.* v. *Harakchand Misirimal Solanki*, (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274: AIR 2014 SC 982: (2014) 1 CTC 755: (2014) 4 Mah LJ 566: (2014) 1 KLT 470: (2014) 103 ALR 212: (2014) 135 AIC 113: (2014) 1 KCCR 521:

(2014) 2 LW 430: (2014) 2 Cal LT 45: (2014) 3 MPLJ 294.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 24-1-2014]

Ivo Agnelo Santimano Fernandes v. State of Goa, (2011) 11 SCC 506: (2011) 4 SCC (Civ) 268, affirmed

***Followed in** Bimla Devi v. State of Haryana, (2014) 6 SCC 583*

[666]— S. 24(2) — Land acquisition proceedings initiated under LA Act, 1894 — Deemed lapsing of, under S. 24(2) — Determination of — *Petitioner landowner directed to file an affidavit stating therein (i) that he continued to be in possession of the land concerned, despite award being passed by the acquiring authority, and (ii) that the compensation as to the said acquisition was neither paid to him nor deposited before the appropriate forum — Land Acquisition Act, 1894, Ss. 4, 6 and 11. Naresh Kumar* v. *State of Haryana*, (2014) 6 SCC 589: (2014) 3 SCC (Civ) 632.

Bench Strength **2**. Coram: *H.L. Dattu* and *S.A. Bobde*, JJ. [Date of decision: 4-2-2014]

[667]— S. 24(2) — Land acquisition proceedings initiated under LA Act, 1894 — Lapsing of, in terms of S. 24(2) of the new Act of 2013 — *Award as to the acquisition proceedings in question passed under LA Act, 1894 on 18-11-1995 — However, compensation not paid nor deposited in court nor received by appellant landowners till 31-1-2014 — Physical possession of land also not taken by Government — On such facts, held, said acquisition proceedings had lapsed in terms of S. 24(2) of the new Act of 2013 — Land Acquisition Act, 1894, Ss. 4, 6, 11 and 31 — Constitution of India, Art. 300-A* (Para 4). *Bimla Devi* v. *State of Haryana*, (2014) 6 SCC 583: (2014) 3 SCC (Civ) 626: (2014) 6 Mah LJ 610: (2014) 4 MPLJ 507.

Bench Strength **2**. Coram: *R.M. Lodha* and *S.A. Bobde*, JJ. [Date of decision: 14-3-2014]

Pune Municipal Corpn. v. Harakchand Misirimal Solanki, (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274, followed

***Affirmed in** Union of India v. Shiv Raj, (2014) 6 SCC 564 at p. 577*

[668]— S. 24(2) — Land acquisition proceedings initiated under LA Act, 1894 — Lapsing of, in terms of S. 24(2) of the new Act of 2013 — *Award made under LA Act, 1894 on 5-6-1987 — Possession of acquired land not taken till date i.e. 7-5-2014 — Compensation deposited with Revenue Department, reiterated, cannot be termed as "deemed payment" — Thus, proceedings must be deemed to have lapsed in terms of S. 24(2) of the new Act of 2013 — Moreover, since in respect of a major chunk of land, which stood covered under the same notification as involved herein, the land acquisition proceedings had already been quashed long back and the same had attained finality, it is not conceivable how the scheme of planned development could be executed at such a belated stage in view of the fact that vacant land in a continuous stretch might not be available — Thus, even on merits there is no force in present appeals filed by Union of India — Quashing of present acquisition proceedings by High Court, held, proper — Hence, upheld — Land Acquisition Act, 1894, Ss. 4(1), 6(1) and 11 — Constitution of India, Art. 300-A. Union of India* v. *Shiv Raj*, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607: AIR 2014 SC 2242: (2014) 6 Mah LJ 612: (2014) 104 ALR 893: (2014) 138 AIC 19: (2014) 3 Cal LJ 23: (2014) 3 Cal LT 29: (2014) 4 MPLJ 542.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 7-5-2014]

Bharat Kumar v. State of Haryana, (2014) 6 SCC 586; Bimla Devi v. State of Haryana, (2014) 6 SCC 583, affirmed

B.R. Gupta v. Union of India, (1989) 37 DLT 150, held, approved

[669]— S. 24(2) — Land acquisition proceedings initiated under LA Act, 1894 — Lapsing of, in terms of S. 24(2) of the new Act of 2013 — Possession not taken by State — *Award as to appellant's land made under LA Act, 1894 in 1987-1988 — Writ petition filed thereagainst by appellant landowner before High Court — Dismissal of — Dispossession of appellant from acquired land was stayed by High Court till that writ petition was decided against appellant in 2007 — Said dismissal of writ petition was under challenge before Supreme Court in present appeal — No interim order was granted herein — Thus, a period of 7 yrs had lapsed without any stay of proceedings and yet no action was taken by respondents pursuant to said award — Hence, proceedings must be deemed to have lapsed in terms of S. 24(2) of the new Act of 2013 — Land Acquisition Act, 1894, Ss. 4(1), 6(1) and 11* (Paras 49 and 50). *Union of India* v. *Shiv Raj*, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607: AIR 2014 SC 2242: (2014) 6 Mah LJ 612: (2014) 104 ALR 893: (2014) 138 AIC 19: (2014) 3 Cal LJ 23: (2014) 3 Cal LT 29: (2014) 4 MPLJ 542.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 7-5-2014]

Vinod Kapur v. Union of India, Civil Writ Petition No. 745 of 1987, decided on 17-12-2004 (Del), reversed

[670]— S. 24(2) — Land acquisition proceedings initiated under Land Acquisition Act, 1894 — Deemed lapsing of, under S. 24(2) — *Though award was passed in relation to appellant's acquired land, physical possession of that land was not taken by acquiring authority — That apart, compensation as to said acquisition was neither paid to appellant landowner nor deposited before appropriate forum — On such facts, held, proceedings initiated under the 1894 Act in relation to appellant's land were deemed to have lapsed in terms of S. 24(2) of the new Act of 2013 — However, liberty granted to respondent Government to initiate appropriate proceedings for acquisition of the land in question afresh in accordance with the provisions of 2013 Act — Land Acquisition Act, 1894, Ss. 4, 6 and 11 — Constitution of India, Art. 300-A* (Paras 6 to 10). *Bharat Kumar* v. *State of Haryana*, (2014) 6 SCC 586: (2014) 3 SCC (Civ) 629: (2015) 1 Mah LJ 32: (2015) 1 MPLJ 1.

Bench Strength **2**. Coram: *H.L. Dattu* and *S.A. Bobde*, JJ. [Date of decision: 4-2-2014]

Bharat Kumar v. State of Haryana, WP (C) No. 18375 of 2004, decided on 11-10-2007 (P&H), reversed

***Affirmed in** Union of India v. Shiv Raj, (2014) 6 SCC 564 at p. 577*

[671]— Ss. 24(2) and 114 r/w S. 6, General Clauses Act, 1897 — Held, S. 114(2) of 2013 Act makes S. 6 of 1897 Act applicable with regard to effect of repeal which is subject to provisions of 2013 Act — *Under S. 24(2), land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award is made 5 yrs or more prior to commencement of 2013 Act and possession of land has not been taken or compensation not paid — In instant case, since compensation was not paid to persons interested where award had been made more than 5 yrs previously, subject land acquisition proceedings are deemed to have lapsed — General Clauses Act, 1897, S. 6 — Constitution of India, Arts. 300-A and 19(1)(f)* (Para 21). *Pune Municipal Corpn.* v. *Harakchand Misirimal Solanki*, (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274: AIR 2014 SC 982: (2014) 1 CTC 755: (2014) 4 Mah LJ 566: (2014) 1 KLT 470: (2014) 103 ALR 212: (2014) 135 AIC 113: (2014) 1 KCCR 521: (2014) 2 LW 430: (2014) 2 Cal LT 45: (2014) 3 MPLJ 294.

Bench Strength **3**. Coram: **R.M. Lodha**, *Madan B. Lokur* and *Kurian Joseph*, JJ. [Date of decision: 24-1-2014]

10. STATUTE UNDER WHICH ACQUISITION MAY BE MADE

— Town planning statute/land acquisition provisions providing for lesser compensation than LA Act, 1894 — Exercise of option by competent authority in this regard — Validity of *See* LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40(3)(jj)(a), 12 and 20, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

LAND ACQUISITION/EMINENT DOMAIN MATTERS

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

LAND USE/RIGHT TO RUN CLINIC/HOSPITAL/ NURSING HOME

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Eligibility and Right to Practise Medicine Operate/Run Clinics/Nursing Homes/Hospitals, etc.'

LANDLORD-TENANT RELATIONSHIP

See RENT CONTROL AND EVICTION

LARGER BENCH VIS-À-VIS SMALLER BENCH

See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court whether itself bound — Inter-bench conflicts

LAW/ABUSE OF PROCESS OF COURT/FRAUD ON COURT

See CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP

— 'Article 226' — Exercise of power under Art. 226 by High Court — Relief

— 'Article 226' — Maintainability of writ petition

See also PRACTICE AND PROCEDURE

See also RENT CONTROL AND EVICTION

LAWS THAT MAY APPLY TO AN ARBITRATION

See ARBITRATION

LEASE

See PROPERTY LAW

LEGAL AID AND ADR

1. GENERALLY

See also CONSTITUTION OF INDIA, Art. 39-A, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425

— Alternate dispute resolution mechanism — Conciliation/Mediation establishments/institutions under personal laws *See* RULE OF LAW, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

2. KERALA STATE LEGAL SERVICES AUTHORITIES RULES, 1998

— R. 12 *See* LIMITATION — 'Limitation Act, 1963', S. 5, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425

3. LEGAL SERVICES AUTHORITIES ACT, 1987

— **S. 12(h)** *See* LIMITATION — 'Limitation Act, 1963', S. 5, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425

LEGAL FICTION
See STATUTE LAW

LEGAL REPRESENTATIVES
See PRACTICE AND PROCEDURE

LEGAL REPRESENTATIVES AND HEIRS
See FAMILY AND PERSONAL LAWS

LEGAL SERVICES AUTHORITIES ACT, 1987
See LEGAL AID AND ADR

LEGISLATION BY INCORPORATION OR BY REFERENCE
See STATUTE LAW

LEGISLATURE VIS-À-VIS COURTS
See CONSTITUTIONAL LAW — 'Grant and Separation of powers' — Each power vis-à-vis the other power(s)

LEGITIMACY OF CHILDREN
See FAMILY AND PERSONAL LAWS

LESBIANS/HOMOSEXUALS/GAYS/LGBT COMMUNITY/LGBT RIGHTS
See HUMAN AND CIVIL RIGHTS

LETTER OF CREDIT (LOC)
See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

LETTER OF INTENT
See HOUSING, CONSTRUCTION AND REAL ESTATE

LICENCE FEE
See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Liquor'

LIEN/HYPOTHECATION/PLEDGE
See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'
See also PROPERTY LAW

LIEN OF EMPLOYER OVER CONTRACTUAL AMOUNTS
See GOVERNMENT CONTRACTS/TENDERS

LIFE INTEREST
See PROPERTY LAW

LIMITATION
See ADMINISTRATIVE LAW — 'Administrative Action' — Quasi-Judicial Function

1. GENERALLY

[672] — **Limitation Acts — Fundamental policy thereunder**. *Tribhuvanshankar* v. *Amrutlal*, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206: (2014) 2 MPLJ 648: (2014) 106 ALR 160: (2014) 1 LW 451.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-11-2013]

Sultan Jehan Begum v. Gul Mohd., AIR 1973 MP 72; Sultan Khan v. State of M.P., 1991 MPLJ 81, held, approved

Halsbury's Laws of England, 4th Edn., Vol. 28, Para 605, relied on

[673] — Object of — Held, the rules of limitation are not meant to destroy or foreclose the right of parties — They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly

The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by. Since "sufficient cause" has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. There is no presumption that delay in approaching the court is always deliberate. In fact, it is always just, fair and appropriate that matters should be heard on merits rather than shutting the doors of justice at the threshold. (Para 14). *S. Ganesharaju* v. *Narasamma*, (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 27-3-2012]

[674] — **Object of law of limitation**. *Brijesh Kumar* v. *State of Haryana*, (2014) 11 SCC 351: (2014) 4 SCC (Civ) 113: AIR 2014 SC 1612: (2014) 117 Cut LT 1008: (2014) 107 ALR 111.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Jasti Chelameswar*, JJ. [Date of decision: 24-3-2014]

2. CONDONATION OF DELAY

[675] — Need for strict compliance with statutory scheme — Not permissible to extend period of limitation on equitable grounds if statute does not permit the same — *Doctrines and Maxims — Dura lex sed lex* (the law is hard but it is the law) — *Limitation Act, 1963, S. 5 — Land Acquisition Act, 1894, S. 28-A*

The reference under Section 18, LA Act to which appellant landowners were not parties was decided on 3-4-2006. The appellants applied for certified copies on 29-5-2006 and obtained the same on 3-6-2006. The application for re-determination of compensation was filed on 18-7-2006.

The Land Acquisition Collector rejected it on ground of limitation. The High Court by the impugned judgment upheld the decision of the Land Acquisition Collector.

The appellant landowners argued that Section 28-A, LA Act is a beneficial legislation and that limitation should begin from date of knowledge of the award by Reference Court under Section 18, LA Act. And that as they were not parties to the reference under Section 18, the limitation under Section 28-A should not begin from date of award by Reference Court.

Dismissing the appeals,

Held :

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. (Paras 16 and 17)

As the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application under Section 28-A, LA Act, has to be filed within the period of limitation as prescribed under Section 28-A, LA Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. (Paras 13 to 15 and 5). *Popat Bahiru Govardhane* v. *Land Acquisition Officer*, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149: (2013) 100 ALR 657: (2013) 130 AIC 97: (2014) 2 Mah LJ 527: (2013) 6 Mah LJ 950: (2014) 2 MPLJ 3: (2013) 5 LW 700: (2014) 1 Cal LT 36.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

Popat Bahiru Govardhane v. Land Acquisition Officer, (2012) 3 Mah LJ 390: (2012) 2 Bom LR 955, affirmed

State of A.P. v. Marri Venkaiah, (2003) 7 SCC 280, followed

Bhagwan Das v. State of U.P., (2010) 3 SCC 545: (2010) 1 SCC (Civ) 776; Premji Nathu v. State of Gujarat, (2012) 5 SCC 250: (2012) 3 SCC (Civ) 52; Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, distinguished

3. LIMITATION ACT, 1963

— S. 3 *See* CIVIL PROCEDURE CODE, 1908, Or. 6 R. 17, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

— Ss. 3 and 12 *See* (2014) 6 SCC 460: (2014) 3 SCC (Civ) 596

— S. 3(2)(b) *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 43, 2(9), 8, 11 and 21, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

— Ss. 43, 2(9), 21 and 23, (2014) 4 SCC 516

See 'Limitation Act, 1963', S. 5, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713

— S. 5 *See also* CIVIL PROCEDURE CODE, 1908, Or. 22 Rr. 3 & 11 and S. 100, (2014) 6 SCC 409: (2014) 3 SCC (Civ) 575

— Or. 47 R. 1 and S. 96, (2013) 11 SCC 341

— S. 114 r/w S. 53, Land Acquisition Act, 1894, (2014) 12 SCC 164

See also PRACTICE AND PROCEDURE — 'Delay/Laches/Limitation', (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210

[676] — S. 5 — Appeal — Delay in filing appeal — Condonation denied for reasons difficult to sustain — Delay of 21 days — *Held, High Court ought to have condoned the delay and heard the appeal on its own merits — Setting aside the impugned order, delay condoned — High Court to decide the first appeal expeditiously on its own merits — CPC, 1908, S. 96. State of Bihar* v. *Pukhan Mahto*, (2011) 15 SCC 225: (2014) 2 SCC (Civ) 360.

Bench Strength **2**. Coram: *H.L. Dattu* and *Chandramauli Kr. Prasad*, JJ. [Date of decision: 18-11-2011]

State of Bihar v. Pukhan Mahto, FA No. 484 of 1995, order dated 10-8-2004 (Pat), reversed

[677] — S. 5 — Applicability to proceedings before Collector under S. 28-A, LA Act — Reiterated, Limitation Act applies to courts and not to quasi-judicial authorities

The reference under Section 18, LA Act to which appellant landowners were not parties was decided on 3-4-2006. The appellants applied for certified copies on 29-5-2006 and obtained the same on 3-6-2006. The application for re-determination of compensation was filed on 18-7-2006. The Land Acquisition Collector rejected it on ground of limitation. The High Court by the impugned judgment upheld the decision of the Land Acquisition Collector.

The appellant landowners argued that Section 28-A, LA Act is a beneficial legislation and that limitation should begin from date of knowledge of the award by Reference Court under Section 18, LA Act. And that as they were not parties to the reference under Section 18, the limitation under Section 28-A should not begin from date of award by Reference Court.

Dismissing the appeals,

Held :

The law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. (Paras 16 and 17)

As the Land Acquisition Collector is not a court and acts as a quasi-judicial authority while making the award, the provisions of the Limitation Act, 1963 would not apply and, therefore, the application under Section 28-A, LA Act, has to be filed within the period of limitation as prescribed under Section 28-A, LA Act. The said provisions require that an application for redetermination is to be filed within 3 months from the date of the award of the court. The proviso further provides that the period of limitation is to be calculated excluding the date on which the award is made and the time requisite for obtaining the copy of the award. (Paras 13 to 15 and 5). *Popat Bahiru Govardhane* v. *Land Acquisition Officer*, (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149: (2013) 100 ALR 657: (2013) 130 AIC 97: (2014) 2 Mah LJ 527: (2013) 6 Mah LJ 950: (2014) 2 MPLJ 3: (2013) 5 LW 700: (2014) 1 Cal LT 36.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 22-8-2013]

Popat Bahiru Govardhane v. Land Acquisition Officer, (2012) 3 Mah LJ 390: (2012) 2 Bom LR 955, affirmed

State of A.P. v. Marri Venkaiah, (2003) 7 SCC 280, followed

Bhagwan Das v. State of U.P., (2010) 3 SCC 545: (2010) 1 SCC (Civ) 776; Premji Nathu v. State of Gujarat, (2012) 5 SCC 250: (2012) 3 SCC (Civ) 52; Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, distinguished

[678] — S. 5 — Condonation of delay — Non-condonation of delay — Propriety — Sufficient cause, if established — Dismissal of appeal against order of Court of Sub-Judge rejecting appellant's suit for non-payment of court fee — *Appellant categorically stating that he had gone to his advocate's office to enquire about status of his suit, when he was informed that his suit was rejected for non-payment of balance court fee — His advocate claiming that he had sent said information to appellant through postal card, but appellant stating that he had not received it and hence, was under impression that his application for extension of time for payment of court fee was allowed — On facts held, since delay in payment of court fees has been condoned, delay in filing appeal also needs to be condoned — Impugned judgment rejecting appellant's application for condonation of delay in filing appeal set aside* (Paras 15 to 17). *Manoharan* v. *Sivarajan*, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425: (2014) 1 LW 83: (2014) 5 Mah LJ 3: (2014) 3 MPLJ 495: (2013) 4 KLT 828: (2014) 102 ALR 228: (2014) 133 AIC 58.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 25-11-2013]

Muneesh Devi v. U.P. Power Corpn. Ltd., (2013) 10 SCC 478: (2013) 4 SCC (Civ) 771, relied on

[679] — S. 5 — Condonation of delay — Non-condonation of delay for non-payment of court fees — Propriety — *Appellant-plaintiff approaching court claiming substantive right to property, but unable to pay balance court fees due to financial constraints; his application for grant of extension of time for remitting balance court fee rejected, consequent to which his original suit was dismissed — High Court dismissing application for condonation of delay in filing appeal — Held, appellant deserved more compassionate attention in light of directive principle laid down in Art. 39-A of Constitution which is equally applicable to district judiciary — Duty of courts is to see that justice is meted out to people irrespective of their socio-economic and cultural rights or gender identity — Appellant deserved waiver of court fee subject to submission of affidavit of income or legal aid by District Legal Services Authority so that he could contest his claim on merits which involved his substantive right — Court of Sub-Judge erred in rejecting appellant's suit for non-payment of court fees — Matter remanded to trial court to permit payment of court fees within eight weeks — Liberty granted to appellant to approach appropriate authorities for grant of legal aid for waiver of court fee — Authorities to facilitate appellant's right of adjudication by securing equal justice — Legal Services Authorities Act, 1987, S. 12(h) — Kerala State Legal Services Authorities Rules, 1998, R. 12 — Constitution of India, Art. 39-A — CPC, 1908, S. 149 and Or. 7 Rr. 11(b) & (c)* (Paras 8 to 12 and 18). *Manoharan* v. *Sivarajan*, (2014) 4 SCC 163: (2014) 2 SCC (Civ) 425: (2014) 1 LW 83: (2014) 5 Mah LJ 3: (2014) 3 MPLJ 495: (2013) 4 KLT 828: (2014) 102 ALR 228: (2014) 133 AIC 58.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 25-11-2013]

State of Bihar v. Kameshwar Prasad Singh, (2000) 9 SCC 94: 2000 SCC (L&S) 845, followed

[680] — S. 5 — Condonation of delay — Obligation of court while dealing with application for condonation of delay and approach to be adopted while considering grounds for condonation — Principles summarised — *Constitution of India, Arts. 226 and 136 — Limitation Act, 1963, S. 5* (Paras 8 to 22)

The principles applicable to an application for condonation of delay are as follows:

(*i*) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(*ii*) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(*iii*) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(*iv*) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(*v*) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(*vi*) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(*vii*) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(*viii*) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(*ix*) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(*x*) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

(*xi*) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

(*xii*) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

(*xiii*) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

(*xiv*) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

(*xv*) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

(*xvi*) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

(*xvii*) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters. (Paras 21.1 to 21.13 and 22.1 to 22.4). *Esha Bhattacharjee* v. *Raghunathpur Nafar Academy*, (2013) 12 SCC 649: (2014) 2 SCC (L&S) 595: (2014) 4 SCC (Cri) 450: (2014) 1 SCC (Civ) 713: (2013) 5 CTC 547: (2013) 5 LW 20: (2014) 1 Cal LT 42.

Bench Strength **2**. Coram: *Anil R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-9-2013]

Collector (LA) v. Katiji, (1987) 2 SCC 107: 1989 SCC (Tax) 172; G. Ramegowda v. Land Acquisition Officer, (1988) 2 SCC 142; O.P. Kathpalia v. Lakhmir Singh, (1984) 4 SCC 66; State of Nagaland v. Lipok Ao, (2005) 3 SCC 752: 2005 SCC (Cri) 906; Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., (2010) 5 SCC 459: (2010) 2 SCC (Civ) 448: (2010) 2 SCC (Cri) 1291: (2010) 2 SCC (L&S) 50; Improvement Trust v. Ujagar Singh, (2010) 6 SCC 786: (2010) 2 SCC (Civ) 798; Balwant Singh v. Jagdish Singh, (2010) 8 SCC 685: (2010) 3 SCC (Civ) 537; Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai, (2012) 5 SCC 157: (2012) 3 SCC (Civ) 24; B. Madhuri Goud v. B. Damodar Reddy, (2012)

12 SCC 693: (2013) 2 SCC (Civ) 546; N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, followed

[681] — S. 5 — Extension of prescribed period — Condonation of delay — Exercise of discretion by court — Condition precedent — Sufficient cause for delay must be satisfactorily and convincingly explained — Inordinate delay caused by inaction or negligence lacking bona fides would disentitle claimant from protection under S. 5 — *Appeal (before High Court against award of Land Acquisition Collector under Land Acquisition Act) seeking relief (of higher compensation) filed after inordinate delay of more than 10 yrs only on getting impetus that others, who had approached appellate court promptly succeeded in getting similar relief — Held, delay not condonable — Land Acquisition Act, 1894, S. 54. Brijesh Kumar* v. *State of Haryana*, (2014) 11 SCC 351: (2014) 4 SCC (Civ) 113: AIR 2014 SC 1612: (2014) 117 Cut LT 1008: (2014) 107 ALR 111.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Jasti Chelameswar*, JJ. [Date of decision: 24-3-2014]

Union of India v. Virpal Singh Chauhan, (1995) 6 SCC 684: 1996 SCC (L&S) 1: (1995) 31 ATC 813; Ajit Singh Januja v. State of Punjab, (1996) 2 SCC 715: 1996 SCC (L&S) 540: (1996) 33 ATC 239, cited

Brijesh Kumar v. State of Haryana, RFA No. 5793 of 2012, decided on 22-11-2013 (P&H), affirmed

[682] — S. 5 — Sufficient cause — Liberal construction — *Held, the expression has to be given a liberal construction so as to advance substantial justice — Unless the respondents are able to show mala fides in not approaching the court within the period of limitation, generally as a normal rule, delay should be condoned* (Paras 12 and 14)

The trend of the courts while dealing with the matter with regard to condonation of delay has tilted more towards condoning delay and directing the parties to contest the matter on merits, meaning thereby that such technicalities have been given a go-by. Since "sufficient cause" has not been defined, thus, the courts are left to exercise a discretion to come to the conclusion whether circumstances exist establishing sufficient cause. The only guiding principle to be seen is whether a party has acted with reasonable diligence and had not been negligent and callous in the prosecution of the matter. (Para 14). *S. Ganesharaju* v. *Narasamma*, (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 27-3-2012]

— S. 5 — When not applicable *See* 'Condonation of Delay', (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

— Ss. 5 and 14 — Applicability *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Foreign Exchange' — Foreign Exchange Management Act, 1999, S. 35, (2011) 15 SCC 30: (2014) 2 SCC (Civ) 23

— S. 12 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 18(2) and 30, (2014) 2 SCC 720: (2014) 2 SCC (Civ) 187

— Ss. 12(1) & (2) — Held, not applicable to NI Act, 1881 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 142 and 138, (2014) 11 SCC 769: (2014) 4 SCC (Civ) 284

— S. 14 *See* CIVIL PROCEDURE CODE, 1908, Or. 7 R. 10, (2014) 1 SCC 648: (2014) 1 SCC (Civ) 617

— S. 27 and Arts. 64 to 66 *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 34, (2014) 1 SCC 669: (2014) 1 SCC (Civ) 630

[683] — S. 27 and Art. 65 — Acquisition of title by adverse possession — Jurisdiction to determine — Proper court is civil court in a properly constituted suit under CPC — Civil court/Rent Controller in eviction suit filed under Rent Control Act, held, cannot determine such question — *CPC, 1908, S. 9* (Para 45). *Tribhuvanshankar* v. *Amrutlal*, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206: (2014) 2 MPLJ 648: (2014) 106 ALR 160: (2014) 1 LW 451.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-11-2013]

Rajendra Tiwary v. Basudeo Prasad, (2002) 1 SCC 90, followed

Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735; Biswanath Agarwalla v. Sabitri Bera, (2009) 15 SCC 693: (2009) 5 SCC (Civ) 695, distinguished

Sultan Jehan Begum v. Gul Mohd., AIR 1973 MP 72; Sultan Khan v. State of M.P., 1991 MPLJ 81, held, approved

Halsbury's Laws of England, 4th Edn., Vol. 28, Para 605, relied on

Amrutlal v. Tribhuvan Shankar, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), partly affirmed and partly reversed

[684] — S. 27 and Art. 65 — Adverse possession — Concept — Principles reiterated — It must be actual, open, hostile, exclusive and continuous. *Tribhuvanshankar* v. *Amrutlal*, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206: (2014) 2 MPLJ 648: (2014) 106 ALR 160: (2014) 1 LW 451.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-11-2013]

Rajendra Tiwary v. Basudeo Prasad, (2002) 1 SCC 90, followed

Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735; Biswanath Agarwalla v. Sabitri Bera, (2009) 15 SCC 693: (2009) 5 SCC (Civ) 695, distinguished

Sultan Jehan Begum v. Gul Mohd., AIR 1973 MP 72; Sultan Khan v. State of M.P., 1991 MPLJ 81, held, approved

Halsbury's Laws of England, 4th Edn., Vol. 28, Para 605, relied on

Amrutlal v. Tribhuvan Shankar, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), partly affirmed and partly reversed

[685] — S. 27 and Art. 65 — Adverse possession — Period of limitation for perfecting title by adverse possession stops running with filing of suit for recovery of possession, even if such suit/action is filed in the wrong forum, as in the present case — *Specific Relief Act, 1963, S. 5 — CPC, 1908, S. 9. Tribhuvanshankar* v. *Amrutlal*, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206: (2014) 2 MPLJ 648: (2014) 106 ALR 160: (2014) 1 LW 451.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-11-2013]

Amrutlal v. Tribhuvan Shankar, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), partly affirmed and partly reversed

[686] — Art. 61 — Applicability — Usufructuary mortgage — Redemption and recovery of possession of mortgaged immovable property — Right to seek redemption, when would accrue — *Due to conflict of opinion of Supreme Court in* Prabhakaran, *(2006) 4 SCC 484 and in various other cases including* Jayasingh Dnyanu Mhoprekar, *(1985) 4 SCC 162 matter referred to larger Bench for decision — Constitution of India, Art. 141 — Transfer of Property Act, 1882, Ss. 62 and 60. Singh Ram* v. *Sheo Ram*, (2014) 9 SCC 211: (2014) 4 SCC (Civ) 776.

Bench Strength **2**. Coram: *S.B. Sinha* and *Cyriac Joseph*, JJ. [Date of decision: 18-8-2008]

[687] — Art. 61 — Usufructuary mortgage — Redemption of — Limitation period for — When commences — *No time-limit fixed for usufructuary mortgagor to seek redemption and recovery of possession of immovable property mortgaged — Right to seek redemption, held, would accrue not from date of creation of mortgage but from date of payment of mortgage money out of usufructs or partly out of usufructs and partly on payment or deposit by mortgagor as provided under S. 62 of TP Act — Until then, limitation would not start under Art. 61 and as such, mere expiry of period prescribed thereunder would not extinguish mortgagor's right of redemption and entitle mortgagee to seek declaration of title and ownership over mortgaged property — Transfer of Property Act, 1882, S. 62 — CPC, 1908, Or. 34 R. 7*

The predecessor of the respondents by a usufructuary mortgage delivered the suit property to the predecessor of the appellants in 1903 for a sum of Rs 80. The mortgagee appellant-plaintiffs filed a suit for declaration that the suit land having not been redeemed for a period of more than 60 years, the mortgagor defendants lost all rights, title and interest therein and the appellants became the owners by prescription. The trial court took the view that in case of usufructuary mortgage no period for the payment of mortgage amount was fixed. The trial court held that it being not the case of the mortgagee plaintiffs that they ever made demand for the mortgage amount and the same was refused, no cause of action had accrued to the mortgagee plaintiffs and that since the period of limitation is to run from the date on which cause of action arises, the mortgagee plaintiffs had not become owners of the suit property on the expiry of the period of more than 60 years. This view was affirmed by the first appellate court.

In the second appeal, the matter was placed before the Full Bench of the High Court. The Full Bench held that in case of usufructuary mortgage, limitation for recovery of possession under Article 61 of the Limitation Act starts on payment of mortgage money as provided under Section 62 of the Transfer of Property Act and not from the date of mortgage. It rejected the argument that after the expiry of period of limitation to sue for foreclosure, the mortgagees have a right to seek a declaration in respect of their title over the suit property by holding that the mortgage cannot be extinguished by any unilateral act of the mortgagee.

In appeals before the Supreme Court, the matters were placed before the present Bench in pursuance of the order passed by a two-Judge Bench wherein the Bench took notice that the observations made by the Supreme Court in *M. Azhagiri Pillai*, (2006) 4 SCC 484 in regard to interpretation and/or application of Article 61 of the Limitation Act were contrary to the principles laid down by the Court in a large number of decisions including *Krishna Babaji Patil*, (1985) 4 SCC 162 as also various decisions referred to by the Full Bench of the High Court.

Dismissing the appeals,

Held :

Article 61 of the Schedule appended to the Limitation Act refers to the right to redeem or recover possession. While the right of the mortgagor to redeem is dealt with under Section 60 of the TP Act, the right of usufructuary mortgagor to recover possession is specially dealt with under Section 62, which is applicable only to usufructuary mortgages and not to any other mortgage. The said right of usufructuary mortgagor though styled as "right to recover possession" is for all purposes, the right to redeem and to recover possession. Thus, while in case of any other mortgage, right to redeem is covered under Section 60 TPA, in case of usufructuary mortgage, right to redeem and recover possession is dealt with under Section 62 TPA. Special right of

usufructuary mortgagor under Section 62 of the TP Act to recover possession commences in the manner specified therein i.e. when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. (Paras 12 and 22)

This distinction in a usufructuary mortgage and any other mortgage is clearly borne out from the provisions of Sections 58, 60 and 62 of the TP Act read with Article 61 of the Schedule to the Limitation Act. Usufructuary mortgage cannot be treated on a par with any other mortgage, as doing so will defeat the scheme of Section 62 of the TP Act. This right of the usufructuary mortgagor has statutory recognition under Section 62 of the TP Act. There is no principle of law on which this right can be defeated. Any contrary view, which does not take into account the special right of usufructuary mortgagor under Section 62 of the TP Act, has to be held to be erroneous on this ground or has to be limited to a mortgage other than a usufructuary mortgage. (Para 12)

In cases where distinction in usufructuary mortgagor's right under Section 62 of the TP Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time-limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years. Thus reference to these judgments clearly spell out the reasons for conflicting views. (Para 21)

Accordingly, the view taken by the Full Bench of the High Court that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the TP Act has to be upheld. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. (Paras 12 and 22). *Singh Ram* v. *Sheo Ram*, (2014) 9 SCC 185: (2014) 4 SCC (Civ) 750: AIR 2014 SC 3447: (2015) 1 Mah LJ 796: (2014) 4 KLT 71: (2014) 107 ALR 177: (2014) 142 AIC 110.

Bench Strength 3. Coram: *T.S. Thakur, Chockalingam Nagappan* and **A.K. Goel**, JJ. [Date of decision: 21-8-2014]

Jayasingh Dnyanu Mhoprekar v. Krishna Babaji Patil, (1985) 4 SCC 162; Harbans v. Om Prakash, (2006) 1 SCC 129; Parichhan Mistry v. Achhiabar Mistry, (1996) 5 SCC 526; Prithi Nath Singh v. Suraj Ahir, AIR 1963 SC 1041: (1963) 3 SCR 302; Hamzabi v. Syed Karimuddin, (2001) 1 SCC 414; Ram Kishan v. Sheo Ram, AIR 2008 P&H 77: (2008) 64 AIC 352, affirmed

Pomal Kanji Govindji v. Vrajlal Karsandas Purohit, (1989) 1 SCC 458; Panchanan Sharma v. Basudeo Prasad Jaganani, 1995 Supp (2) SCC 574, impliedly affirmed

Ram Prasad v. Bishambhar Singh, AIR 1946 All 400; Lachhman Singh v. Natha Singh, AIR 1940 Lah 401; Jadubans Sahai v. Bahuria Phulpati Kuer, AIR 1957 Pat 452, held, affirmed

Sampuran Singh v. Niranjan Kaur, (1999) 2 SCC 679, distinguished

Rashbehary Ghose: The Law of Mortgage, pp. 231-32; Halsbury's Laws of England, 4th Edn., Vol. 32, p. 264; Edward F. Cousins: The Law of Mortgages, p. 294; Fisher and Lightwood's Law of Mortgage, cited

Bhandaru Ram v. Sukh Ram, AIR 2012 HP 1, overruled

Prabhakaran v. M. Azhagiri Pillai, (2006) 4 SCC 484, overruled on this point

State of Punjab v. Ram Rakha, (1997) 10 SCC 172, held, overruled on this point

— **Art. 127** *See* CIVIL PROCEDURE CODE, 1908, Or. 21 R. 89, (2014) 6 SCC 397: (2014) 3 SCC (Civ) 572

— Or. 21 R. 92(2), (2012) 13 SCC 568

LIMITATION ACT, 1963

See LIMITATION

LIMITATION/DELAY/LACHES

See LAND ACQUISITION AND REQUISITION

See also PRACTICE AND PROCEDURE

LIQUOR

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS

LITERAL OR STRICT CONSTRUCTION

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Basic rules

LIVE-IN RELATIONSHIP/PRESUMED MARRIAGE/PREMARITAL SEX

See FAMILY AND PERSONAL LAWS

LOANS/RECOVERY OF DEBTS/NON-PERFORMING ASSETS (NPAS)/RECOVERY OF LOAN

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

LOCAL GOVERNMENT

TOWN PLANNING

Synopsis

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(a) Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Contractual matters (including government contracts and auctions), Art. 226, (2011) 15 SCC 517: (2014) 2 SCC (Civ) 631

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 55(1)(f) and 108(b), (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

[688] — Allotment of land — Compliance with terms of allotment — Restriction on alienation/change in use except with prior permission of State Government — Subsequent exemption granted for utilising surplus land for purpose other than for which allotted — Exemption order and housing scheme permitted by Competent Authority under 1976 Act, held, would prevail over and supersede conditions of order of allotment — *In compliance with exemption order/housing scheme appellant entering into agreement with Developers for development of the land — After 24 yrs, allotment stayed and demand for unearned income charged for violation of terms and conditions of allotment order by granting rights to Developers for construction of houses and selling them after development — Sustainability — Held, State Government allowed the change in land utilisation for developmental purposes other than stipulated in allotment order — By the housing scheme excess land was allowed to be developed for construction of houses for weaker sections of society — Appellant decided to develop the land as per the housing scheme through the Developers — State Government agreed to the proposal — State Government at request of Developer, also extended period for completion of the housing scheme — Hence, State Government allowed appellant to change land use to develop surplus land for purposes other than for which it was originally allotted — Such permission is in accordance with terms and conditions of order of allotment — Demand notice issued by the Collector and High Court's orders, set aside — Matters remitted to Competent Authority to decide whether appellant is liable to pay any amount towards part of the unearned income — Urban Land (Ceiling and Regulation) Act, 1976, Ss. 20 and 21 — Transfer of Property Act, 1882, Ss. 10 to 12*

The Government of Maharashtra acquired the land in question in favour of the appellant Company and issued an order of allotment with the specific condition that the Company shall not in any way whatsoever, alienate the said land or any portion thereof by way of sale, mortgage, gift, lease, exchange or otherwise howsoever except with the prior permission in writing, of the Government. In accordance with the provisions of Section 20 of the Urban Land Ceiling Act, 1976 the Company submitted an application for holding land in excess of the ceiling limit by grant of an exemption. The Company also made an application under Section 21 of the Urban Land Ceiling Act on 23-3-1979 for granting an exemption for utilising the land for construction of dwelling units to accommodate the weaker sections of society. Pursuant to the application, permission was granted to the Company to use the land for the stated purpose for which the Company entered into an agreement with the Developers for development of the land.

One of the conditions of the allotment order being that the Company could not alienate the land in any manner whatsoever without prior permission of the Government, the Company wrote a letter to the Collector and also to the Competent Authority, and sought clarification as to whether the condi-

tions imposed under the exemption orders would prevail over and supersede the conditions of the order of allotment. In reply to the said letter the Deputy Collector and Competent Authority issued a clarification that the condition relating to alienation of land without prior permission as mentioned in the order of allotment, would stand overridden by the terms of exemption granted under Section 21 of the Urban Land Ceiling Act, 1976.

While the work was in progress, the Collector informed the Company that the land allotted to it for construction of residences for its employees, was not utilised for the said purpose and instead the Developers had been given the right for construction of the housing project and to sell them after development. It was alleged that by such action, the Company breached the terms and conditions of the order of allotment and, thereby, was liable to pay 50% of its unearned income to the State Government. As the amount was not deposited, the Company was asked to show cause as to why the land should not be confiscated. The Company denied the allegation but it was not considered. The Collector vide impugned order held that the Company had breached the terms and conditions of the order of allotment and thereby was liable to pay 50% of the difference amount of the unearned income amounting to Rs 14,11,45,851. The Collector/Tahsildar issued the impugned orders against which two writ petitions were preferred by the Company for setting aside the orders imposing the charge towards unearned income and the demand notice, both of which were dismissed. The Division Bench of the High Court held that there was a breach of terms and conditions of the order of allotment and, therefore, it was open to the respondents to take the appropriate proceedings in accordance with law, including the recovery of unearned profit.

Allowing the appeal,

Held :

As per the terms and conditions of the order of allotment, there is a restriction imposed on the Company to transfer the land or change of use of the land, etc. which can be made only with a prior permission of the State Government. Admittedly, regarding that portion of the acquired land which was declared surplus, the Company wanted to retain it for the weaker sections of Society. On an application filed by the Company, the Competent Authority approved the housing scheme under Section 21(1) of the Urban Land Ceiling Act by its letter dated 11-1-1984 with conditions and restrictions. A question was raised by the Company as to which of the terms and conditions, including the restrictions imposed by the order of allotment as well as the housing scheme, under Section 21 will prevail over the other. The Competent Authority by its reply clarified and intimated the appellant Company that the conditions and restrictions in the order of allotment as regards the alienation of the land without permission, would be overridden by the exemption granted and the terms and conditions mentioned in the order of housing scheme. (Paras 23, 25 and 26)

There is no allegation of breach of any terms and conditions of the order of allotment in regard to rest of the land which has not been declared surplus. From the housing scheme it is apparent that the State Government allowed the change in its utilisation for developmental purposes other than that stipulated. By the said housing scheme the excess land was allowed to be developed for construction of the houses for the weaker sections, for school, shopping centre, dispensary, recreationary ground, etc. The Company was allowed to utilise at least 33% of the built-up area for its purpose and the rest for other purposes. The State Government at the request of the Developers, also extended the period for completion of the housing scheme. Hence, the State Government allowed the Company to change the use of the land and to develop the surplus land for purposes other than that for which the said land was originally allotted and such permission is in accordance with the terms and conditions as mentioned in the order of allotment. (Paras 30 to 32)

The High Court failed to notice the aforesaid facts and erred in holding that the Company breached terms and conditions of the order of allotment. Hence, the impugned orders and the demand notice issued by the Collector and the order passed by the High Court are accordingly set aside. The matters are remitted to the Competent Authority to decide whether the Company is liable to pay any amount towards part of the unearned income. Before passing such order, the Competent Authority will issue a fresh show-cause notice to the Company referring therein the rule/order/guideline, if any, pursuant to which the Company is liable to pay part of the unearned income. (Paras 40 and 41). *Voltas Ltd.* v. *Tahsildar, Thane*, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49: (2012) 95 ALR 871: (2012) 120 AIC 44.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 8-11-2012]

Voltas Ltd. v. Tehsildar, AIR 2003 Bom 351: (2003) 2 Mah LJ 742, overruled

[689] — Allotment of land — Terms and conditions of allotment — Demand for recovery of

50% of unearned income for breach of — Liability to pay by allottee — *Absence of stipulation of any such charges in order of allotment or in order granting permission for housing scheme nor relevant G.O. produced outlining such policy — Held, not possible to decide whether the Company is liable to pay any amount towards unearned income as per the said policy — Question left open — Remitted to Competent Authority for determination — Contract Act, 1872, S. 70* (Paras 34 to 37). *Voltas Ltd.* v. *Tahsildar, Thane*, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49: (2012) 95 ALR 871: (2012) 120 AIC 44.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 8-11-2012]

[690] — Industrial area (as declared by industrial authority, Noida) — Members of respondent cooperative housing societies, whether entitled to allotment of plots (a) on basis of recommendations of a committee, which was negotiating which cooperating housing societies prior to making recommendations and/or (b) on basis of a Government Order dt. 22-10-2010 — Respondent societies not fulfilling the eligibility criteria as recommended by the committee — *Government Order dt. 22-10-2010 not being administratively binding on authority concerned i.e. Noida, nor addressed to Noida or deemed to be legally addressed to Noida to give such benefit to respondent housing societies (though legally Government could have expressly made the order binding on Noida) — Effect — Respondent housing societies, held, are not entitled to benefit under Government Order dt. 22-10-2010 — Members of respondent societies are not also entitled to allotment of plots as per recommendations of Committee concerned — High Court order directing authorities to give such benefit, therefore, set aside — U.P. Industrial Area Development Act, 1976 (6 of 1976), Ss. 2(d) and 12 — U.P. Urban Planning and Development Act, 1973 (11 of 1973), S. 41*

Various cooperative housing societies, including the two respondent societies had purchased lands, which were subsequently declared to be industrial area by a declaration under Section 2(*d*) of the U.P. Industrial Area Development Act, 1976 (1976 Act). Disputes arose between the Government and these societies (including the two respondent societies) as residential houses could not be permitted in an industrial area. Noida (New Okhla Industrial Development Authority) constituted a committee (the Committee) to resolve the dispute. The Committee recommended that only one plot should be allotted to each member of 16 specified housing societies. But the recommendation did not include the names of the two respondent societies. The Committee further recommended that said benefit would be given only to members of those housing societies which were cooperative housing societies as on 1-5-1976 (respondent societies having come into existence after the said date). The respondent societies prayed to Noida from time to time for allotment of a suitable alternative developed piece of plot on basis of said recommendations and by relying on Notification dated 22-10-2002 of the Department of Housing and Urban Planning.

The High Court by the impugned order directed the appellant authority Noida to give benefit to the respondent societies under the Notification dated 22-10-2002. The High Court directed said relief to respondent societies by holding that as the respondent societies were cooperative societies, they were entitled to said benefit, denial of which would be arbitrary and discriminatory. The High Court further held that it was immaterial even if the respondent societies had not been registered prior to the 1976 Act.

The contention on behalf of the State Government was that the benefit under the Notification dated 22-10-2002 was under the U.P. Urban Planning and Development Act, 1973 (1973 Act) and could not be extended to the said industrial area, which was governed under 1976 Act. And the authorities under the two statutes function under different departments of the Government. The respondent societies on the other hand contended that both the authorities are same and notification would apply to Noida.

The two main issues in the present case was whether recommendations of the Committee covered the two respondent societies. And whether Noida was bound by the Notification dated 22-10-2002.

Allowing the appeals and answering both the questions in the negative,

Held :

It is evident that the Committee made recommendation for allotment of one plot per member to the members of sixteen specified cooperative housing societies and, while doing so, it further observed that only those members shall be entitled to get plots who were bona fide members as on 1-5-1976. Both the respondent societies do not find place in the said recommendation and further it is

not their case that they were even existing on 1-5-1976. The High Court fell into error in observing that the report simply talks about the cooperative housing societies irrespective of the year of registration. Hence, the High Court erred in holding that the denial of benefit of the Committee's report to the two respondent societies is arbitrary and discriminatory. The said reasoning of High Court is therefore, disapproved. (Paras 18 and 19)

The 1973 Act aimed to provide for the planned development of certain areas of the State. Sections 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of the 1973 Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice-Chairman to carry out such direction. Section 12 of the 1976 Act provides for application of certain provisions of the 1973 Act including Section 41. (Paras 21.3 to 21.5)

Noida is an industrial development authority constituted under Section 3, 1976 Act. The authority under the 1976 Act can be constituted for any industrial development area and such areas would be those which have been declared as such by the State Government by a notification under Section 2(*d*), 1976 Act. The object of the industrial development authority, as is evident from Section 6, 1976 Act is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. (Paras 21.1 and 21.2)

The 1973 Act is an earlier Act whereas 1976 Act is a later Act. Incorporation of the provisions of the earlier Act into a later Act is a legislative device adopted for the sake of convenience and in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act. When such a legislation is made by incorporation, the provisions so incorporated become part and parcel of the later Act. Therefore, Section 41 of the 1973 Act shall be deemed to have been incorporated in the 1976 Act with adaptation and the authority constituted under the 1973 Act shall be deemed to be in reference to an authority constituted under the 1976 Act and the Vice-Chairman under the 1973 Act would be the Chief Executive Officer of the 1976 Act. However, the power exercised under Section 41 of the 1973 Act shall not be deemed to result in an order under Section 12 of the 1976 Act merely on the ground that Section 41 has been included in the 1976 Act by incorporation which is a device adopted for the sake of convenience. (Paras 22.1 to 22.3)

The order dated 22-10-2002 has been issued by the Housing Department of the State Government. It has been addressed to various authorities but not addressed to the industrial development authorities. The Vice-Chairman of the development authorities cannot be read to mean the Chief Executive Officer of the Industrial Development Authority constituted under the 1976 Act. Such an order can be passed in respect of the industrial development authority in view of Section 12 by such departments of the State Government which have administrative control over the industrial development authority. However, in case such a power is exercised by such a department of the State Government it shall have no bearing on the development authorities constituted under the 1973 Act. The decision taken by one administrative department concerned with industrial development authority shall not apply to the development authorities within administrative control of another department of the State Government or vice versa unless a conscious decision is taken to apply the same to both the categories of authorities in case the rules of executive business of the State so permits. (Paras 22.4 to 22.5)

Therefore, the order dated 22-10-2002 shall not be applicable to the appellant authority. Both the grounds given by the High Court while issuing the impugned direction, being unsustainable in law, the same cannot be allowed to stand. In the result, these appeals are allowed, the impugned judgments and orders of the High Court are set aside. But there shall be no order as to costs. (Paras 23 and 24). *NOIDA* v. *Sarvpriya Sehkari Avas Samiti Ltd.*, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156: AIR 2013 SC 3143.

Bench Strength **2**. Coram: **Chandramauli Kr. Prasad** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

Sarvpriya Sahakari Avas Samiti Ltd. v. State of U.P., Civil Misc. WP No. 41065 of 2003, order dated 20-6-2008 (All); Shivalik Sahkari Avas Samiti v. State of U.P., (2010) 82 ALR 660; Sarvpriya Sahakari Avas Samiti Ltd. v. Noida Authority, Civil Misc. WP No. 45613 of 2002, order dated 25-10-2002 (All), reversed

— Letter of intent — Non-compliance with terms and conditions — No agreement for sale that can be specifically enforced *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

[691] — Residential plots to cooperating housing societies — Government negotiating through a committee — Recommendations of committee, whether covered the respondent housing societies — *Committee recommending that members of only those cooperative housing societies which were existing prior to 1-5-1976 would be entitled to allotment of only one plot — Respondent societies not claiming to be existing prior to said date — Therefore, members of respondent societies, held, were not eligible for allotment of plots under the said recommendations — High Court erred in holding them eligible under the recommendations only on ground of their being cooperative housing societies — U.P. Industrial Area Development Act, 1976 (6 of 1976), S. 2(d)*

Various cooperative housing societies, including the two respondent societies had purchased lands, which were subsequently declared to be industrial area by a declaration under Section 2(*d*) of the U.P. Industrial Area Development Act, 1976 (1976 Act). Disputes arose between the Government and these societies (including the two respondent societies) as residential houses could not be permitted in an industrial area. Noida (New Okhla Industrial Development Authority) constituted a committee (the Committee) to resolve the dispute. The Committee recommended that only one plot should be allotted to each member of 16 specified housing societies. But the recommendation did not include the names of the two respondent societies. The Committee further recommended that said benefit would be given only to members of those housing societies which were cooperative housing societies as on 1-5-1976 (respondent societies having come into existence after the said date). The respondent societies prayed to Noida from time to time for allotment of a suitable alternative developed piece of plot on basis of said recommendations and by relying on Notification dated 22-10-2002 of the Department of Housing and Urban Planning.

The High Court by the impugned order directed the appellant authority Noida to give benefit to the respondent societies under the Notification dated 22-10-2002. The High Court directed said relief to respondent societies by holding that as the respondent societies were cooperative societies, they were entitled to said benefit, denial of which would be arbitrary and discriminatory. The High Court further held that it was immaterial even if the respondent societies had not been registered prior to the 1976 Act.

The contention on behalf of the State Government was that the benefit under the Notification dated 22-10-2002 was under the U.P. Urban Planning and Development Act, 1973 (1973 Act) and could not be extended to the said industrial area, which was governed under 1976 Act. And the authorities under the two statutes function under different departments of the Government. The respondent societies on the other hand contended that both the authorities are same and notification would apply to Noida.

The two main issues in the present case was whether recommendations of the Committee covered the two respondent societies. And whether Noida was bound by the Notification dated 22-10-2002.

Allowing the appeals and answering both the questions in the negative,

Held :

It is evident that the Committee made recommendation for allotment of one plot per member to the members of sixteen specified cooperative housing societies and, while doing so, it further observed that only those members shall be entitled to get plots who were bona fide members as on 1-5-1976. Both the respondent societies do not find place in the said recommendation and further it is not their case that they were even existing on 1-5-1976. The High Court fell into error in observing that the report simply talks about the cooperative housing societies irrespective of the year of registration. Hence, the High Court erred in holding that the denial of benefit of the Committee's report to the two respondent societies is arbitrary and discriminatory. The said reasoning of High Court is therefore, disapproved. (Paras 18 and 19)

The 1973 Act aimed to provide for the planned development of certain areas of the State. Sections 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of the 1973 Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice-Chairman to carry out such direction. Section 12 of the 1976 Act provides for application of certain provisions of the 1973 Act including Section 41. (Paras 21.3 to 21.5)

Noida is an industrial development authority constituted under Section 3, 1976 Act. The authority under the 1976 Act can be constituted for any

industrial development area and such areas would be those which have been declared as such by the State Government by a notification under Section 2(*d*), 1976 Act. The object of the industrial development authority, as is evident from Section 6, 1976 Act is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. (Paras 21.1 and 21.2)

The 1973 Act is an earlier Act whereas 1976 Act is a later Act. Incorporation of the provisions of the earlier Act into a later Act is a legislative device adopted for the sake of convenience and in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act. When such a legislation is made by incorporation, the provisions so incorporated become part and parcel of the later Act. Therefore, Section 41 of the 1973 Act shall be deemed to have been incorporated in the 1976 Act with adaptation and the authority constituted under the 1973 Act shall be deemed to be in reference to an authority constituted under the 1976 Act and the Vice-Chairman under the 1973 Act would be the Chief Executive Officer of the 1976 Act. However, the power exercised under Section 41 of the 1973 Act shall not be deemed to result in an order under Section 12 of the 1976 Act merely on the ground that Section 41 has been included in the 1976 Act by incorporation which is a device adopted for the sake of convenience. (Paras 22.1 to 22.3)

The order dated 22-10-2002 has been issued by the Housing Department of the State Government. It has been addressed to various authorities but not addressed to the industrial development authorities. The Vice-Chairman of the development authorities cannot be read to mean the Chief Executive Officer of the Industrial Development Authority constituted under the 1976 Act. Such an order can be passed in respect of the industrial development authority in view of Section 12 by such departments of the State Government which have administrative control over the industrial development authority. However, in case such a power is exercised by such a department of the State Government it shall have no bearing on the development authorities constituted under the 1973 Act. The decision taken by one administrative department concerned with industrial development authority shall not apply to the development authorities within administrative control of another department of the State Government or vice versa unless a conscious decision is taken to apply the same to both the categories of authorities in case the rules of executive business of the State so permits. (Paras 22.4 to 22.5)

Therefore, the order dated 22-10-2002 shall not be applicable to the appellant authority. Both the grounds given by the High Court while issuing the impugned direction, being unsustainable in law, the same cannot be allowed to stand. In the result, these appeals are allowed, the impugned judgments and orders of the High Court are set aside. But there shall be no order as to costs. (Paras 23 and 24). *NOIDA* v. *Sarvpriya Sehkari Avas Samiti Ltd.*, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156: AIR 2013 SC 3143.

Bench Strength **2**. Coram: **Chandramauli Kr. Prasad** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

Sarvpriya Sahakari Avas Samiti Ltd. v. State of U.P., Civil Misc. WP No. 41065 of 2003, order dated 20-6-2008 (All); Shivalik Sahkari Avas Samiti v. State of U.P., (2010) 82 ALR 660; Sarvpriya Sahakari Avas Samiti Ltd. v. Noida Authority, Civil Misc. WP No. 45613 of 2002, order dated 25-10-2002 (All), reversed

(b) Cawnpore Urban Area Development Act, 1945

— Ss. 53 & 60 *See* 'Town Planning' — U.P. Urban Planning and Development Act, 1973 (11 of 1973), S. 17, (2011) 15 SCC 98: (2014) 2 SCC (Civ) 249

(c) Civil/Public amenities/Infrastructure provided by local/municipal authorities

— Public amenities — Power of local government bodies to charge fees for provision of *See* CONSTITUTION OF INDIA, Arts. 243-Q, 243-W(a)(i) & (ii) r/w Sch. XII, Entry 17 and Ss. 265, 14 & 300-A, (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

(d) Colonisation/Development Project

— Common areas and facilities — Instances — Stilt parking area, held, covered *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities — Ownership of allotted land for *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities — Rights of apartment owners vis-à-vis coloniser *See* 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities — Statutorily provided by coloniser for entire colony *See*

'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

See also 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), Ss. 3(i) and 3(f) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities — Statutorily provided by coloniser for entire colony — Nature of *See* PROPERTY LAW — 'Easements Act, 1882', Ss. 7, 13 and 55, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Community and commercial facilities — Statutorily provided by coloniser for entire colony — Placement/position in colony according to layout plans of colony — Mere placement of some "community and commercial facilities" in gated sub-colony/group housing area/complex, held, will not confer rights on flat/apartment owners in that gated area to claim ownership of these facilities as being part of "common areas" *See* 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Development works — Internal/external development works *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

(e) Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976)

— Ss. 12 & 20 *See* S. 40(3)(jj)(a)

— Ss. 20, 12 and 40 *See* CONSTITUTION OF INDIA, Arts. 300-A and 31-A(1) second proviso, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

[692] — S. 40 — Words "regard being had" in — Import of — *Held, S. 40(1) simply provides that in the making of town planning scheme the authority has to have regard to the final development plan, if any — Thus, the words "having regard to the development plan" in S. 40 means that town planning scheme cannot disregard or ignore the designation/reservation made in the development plan, but while the conditions specified in the development plan are to be taken into consideration they are only a guide and not fetters upon the exercise of power available to competent authority in framing town planning scheme. Ahmedabad Municipal Corpn.* v. *Ahmedabad Green Belt Khedut Mandal*, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710: AIR 2014 SC 2377: (2014) 3 Guj LR 2516.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 9-5-2014]

Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705; Bhikhubhai Vithlabhai Patel v. State of Gujarat, (2008) 4 SCC 144, affirmed

Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, explained

Ahmedabad Green Belt Khedut Mandal v. State of Gujarat, (2001) 1 Guj LR 888; Vadodara Sheheri Sankulan Khedut Mandal v. Vadodara Urban Development Authority, Special Civil Application No. 10912 of 2009, order dated 9-10-2009 (Guj), reversed

[693] — Ss. 40, 45(2)(a), (b), (c), 48-A, 52, 53(a), 67, 77, 80, 81, 82, 84 and 85 — Public purposes for which lands can be reserved/designated under town planning scheme under Ss. 40(3)(j) and (jj)(a) — Scope of — *Held, town planning scheme is just like consolidation proceedings and provides for pooling the entire land covered by the scheme — Thereafter, after reshuffling and reconstituting of plots, market value of original plots and final plots is to be assessed and the authority has to determine as to whether a landowner has suffered some injury or has gained from such process — When town planning scheme comes into force all rights in the original plots are extinguished, and simultaneously therewith ownership springs in the reconstituted plots — By this reconstitution and readjustment of plots, there is no vesting of land in the local authority — Concept that lands vest in a local authority when the intention to make a town planning scheme is notified, is against the plain intendment of the Act — Even steps taken by the State do not involve application of the doctrine of eminent domain. Ahmedabad Municipal Corpn.* v. *Ahmedabad Green Belt Khedut Mandal*, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710: AIR 2014 SC 2377: (2014) 3 Guj LR 2516.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 9-5-2014]

Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705; Bhikhubhai Vithlabhai Patel v. State of Gujarat, (2008) 4 SCC 144, affirmed

Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, explained

Ahmedabad Green Belt Khedut Mandal v. State of Gujarat, (2001) 1 Guj LR 888; Vadodara Sheheri Sankulan Khedut Mandal v. Vadodara Urban Development Authority, Special Civil Application No. 10912 of 2009, order dated 9-10-2009 (Guj), reversed

— S. 40(1) *See* (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

— Ss. 40(3)(j) and (jj)(a) *See* 'Town Planning' — Town planning scheme, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

[694] — Ss. 40(3)(jj)(a), 12 and 20 — Provision for reservation/designation of 15% of land in town planning scheme for public purposes — Vires of — *Area originally reserved as "green belt" dereserved after period of 10 yrs, reac-*

quired/re-designated for residential utility services under a town planning scheme under 1976 Act on payment of lesser compensation, instead of under 1894 Act, held, valid — The same is not a circuitous method to acquire land without paying any compensation/lesser compensation — Held, S. 40(3)(jj)(a) is valid — Under S. 20 of 1976 Act lapsing of the designation of the land in the final development plan does not take it out of the purview of town planning scheme and such a provision does not prevent making of provision in a town planning scheme for any reservation specified in S. 40(3) — Land acquired under S. 20 r/w S. 12 of the 1976 Act would need infrastructural facility and the original plot which is acquired would require to be reconstituted as a final plot and to make a building site — S. 40(3)(jj)(a)(iv) has to be read in consonance/conjointly with the other statutory provisions and not in isolation — The sale up to the extent of 15% provided for in S. 40(3)(jj)(a)(iv) is from the total area covered under the scheme and not in respect of every plot of land — In order to generate financial resources for the development of infrastructure, saleable plots for residential, commercial and industrial use are allotted by the appropriate authority — Similarly, while reconstituting the plots, final plot is offered to the original owner for its beneficial use — High Court has recorded an erroneous finding that if a designation lapses under S. 20, the land cannot be again reserved in a town planning scheme, and further if the land cannot be acquired under S. 20 for want of capacity to pay any compensation under the 1894 Act, it cannot be allowed to be acquired indirectly on lesser payment of compensation as provided under the 1976 Act — Hence, its order set aside — Gujarat Town Planning and Urban Development Rules, 1979 — Constitution of India, Arts. 300-A and 14 — Land Acquisition Act, 1894, S. 4. Ahmedabad Municipal Corpn. v. *Ahmedabad Green Belt Khedut Mandal*, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710: AIR 2014 SC 2377: (2014) 3 Guj LR 2516.

Bench Strength **3**. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 9-5-2014]

Jilubhai Nanbhai Khachar v. State of Gujarat, 1995 Supp (1) SCC 596; Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705; Bhikhubhai Vithlabhai Patel v. State of Gujarat, (2008) 4 SCC 144, affirmed

Bhavnagar University v. Palitana Sugar Mill (P) Ltd., (2003) 2 SCC 111, explained

Ahmedabad Green Belt Khedut Mandal v. State of Gujarat, (2001) 1 Guj LR 888; Vadodara Sheheri Sankulan Khedut Mandal v. Vadodara Urban Development Authority, Special Civil Application No. 10912 of 2009, order dated 9-10-2009 (Guj), reversed

— Ss. 45(2)(a), (b) & (c) *See* S. 40

— Ss. 48-A, 52, 53(a), 67, 77, 80 to 82, 84 and 85 *See* S. 40

(f) Gujarat Town Planning and Urban Development Rules, 1979

See also 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40(3)(jj)(a), 12 and 20, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

— R. 26(4) *See* 'Town Planning' — Town planning scheme, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

(g) Haryana Apartment Ownership Act, 1983 (10 of 1983)

— S. 3(f) *See* S. 3(i)

See also HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Ss. 3(f) and 6 *See* 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

[695] — S. 3(f)(7) and Ss. 11 to 13 — Scope — Inclusion of "community and commercial facilities" in statutory declaration by coloniser — Use of expression "may" in S. 3(f)(7) — Effect — *Held, it is in discretion of coloniser either to provide or not to provide in the declaration "community and commercial facilities" like schools, hospitals, shops, community centres, etc. as referred to in S. 3(3)(a)(iv) of Haryana Development and Regulation of Urban Areas Act, 1975 — Coloniser is only duty-bound to provide all "common areas and facilities" to apartment owners as referred to in cls. (1) to (6) and (8) of S. 3(f) of HAO Act — There is a marked difference between "common areas and facilities" and "community and commercial facilities" — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv) — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) — Words and Phrases — "Community and commercial facilities" and "common areas and facilities" — Easements Act, 1882, Ss. 7, 13 and 55. DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd., (2010) 9 SCC 536, distinguished

Manmohan Lowe v. State of Haryana, CWP No. 960 of 2000, order dated 9-9-2009 (P&H), reversed

— Ss. 3(f)(7), 11 to 13 and 6 *See* 'Town Planning' — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

[696] — Ss. 3(i) and 3(f) and Ss. 11 to 13 — Competent authority — Objections before, as to statutory declaration — Matters in respect of which objections can be raised — *Held, objections can be raised by apartment owners before competent authority who can look into same, if coloniser/developer, fails to provide "common areas and facilities" like corridors, lobbies, staircases, lifts, fire escape, etc. — However, if coloniser does not provide "community and commercial facilities" as referred to in S. 3(3)(a)(iv) of Haryana Development and Regulation of Urban Areas Act, 1975 in the declaration, no objection can be raised by apartment owners, as it is in discretion of coloniser to provide or not to provide "community and commercial facilities" in the declaration — Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv) — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) — Easements Act, 1882, Ss. 7, 13 and 55. DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

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Manmohan Lowe v. State of Haryana, CWP No. 960 of 2000, order dated 9-9-2009 (P&H), reversed

— Ss. 11 to 13 *See* S. 3(f)(7); S. 3(i)

(h) Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975)

— Ss. 2(e), 2(i), 2(g) and 3(3)(a)(ii) *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

[697] — S. 2(g) — (as amended in 2003) and Ss. 2(e) & 3(3)(a)(ii) — "External development works" — Amended definition — Scope — *Held, amendment does not seek to transfer an obligation of actually carrying out external development work upon the coloniser — Only the scope of said expression has been widened and State Government has been given a wider discretion in expending the amount collected from coloniser as external development charges — Further held, amendment has no effect on judgment in* DLF Qutab Enclave Complex Educational Charitable Trust, *(2003) 5 SCC 622 — Haryana Development and Regulation of Urban Areas Rules, 1976, R. 11(1)(c)* (Para 64). *DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, explained

— S. 3(3)(a)(iv) *See* 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Ss. 3(i) and 3(f) and Ss. 11 to 13, (2014) 12 SCC 231

See also HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

[698] — S. 3(3)(a)(iv) — Community and commercial facilities constructed by coloniser, as required under S. 3(3)(a)(iv) in a colony — (1) Rights of flat/apartment owners over such facilities — Nature — Ownership or right of user/right to enjoy — (2) Right of flat/apartment owners to claim inclusion of community/commercial facilities concerned in statutory declaration under State Apartment Ownership Act so as to acquire ownership thereof — (3) Proximity of certain flats/apartments to such community facilities or their placement in a particular gated sub-colony/housing complex within the larger colony — If such proximate or gated flat/apartment owners can claim any priority of rights over rights of other flat/apartment owners in colony concerned — *Held, firstly, flat/apartment owners of the colony are not the owners of "community and commercial facilities" like schools, hospitals, shops, community centres, etc. as developed/constructed by coloniser as required under S. 3(3)(a)(iv) of 1975 Act unless coloniser specifically includes these facilities in statutory declaration under Ss. 11 to 13 r/w S. 3(f) of Haryana Apartment Ownership Act, 1983 (HAO Act) — However, right of user i.e. right to enjoy those facilities shall always be with flat/apartment owners whether shown in the declaration or not — Secondly, held, ownership of allotted land for construction of these "community and commercial facilities" vests with coloniser along with obligation to provide these facilities "at its own cost" which is not even recoverable from apartment owners — Including these facilities in statutory declaration would entitle apartment owners to an undivided interest in such facilities as per S. 6 of HAO Act without bearing the cost of it (i.e. cost of purchasing land and cost of construction) — Hence, under S. 3(f)(7) of HAO*

*Act, it is not made obligatory for coloniser to include these "community and commercial facilities" in declaration — **Thirdly**, held, these facilities are for benefit of entire colony and not for exclusive use of apartment owners in one part of colony — Mere placement of these facilities within proximity to a particular group housing complex or within a particular gated sub-colony within the main colony, will not make any difference — In present case, coloniser (DLF) developed a residential colony of which Silver Oaks Apartments was a gated sub-colony — DLF fulfilling its obligations under S. 3(3)(a)(iv) of 1975 Act and constructed "at its own cost", community and commercial facilities like one community centre, 3 shops and 2 nursery schools in the areas earmarked for same in layout plan of colony — Objection of Silver Oaks Apartments owners as to non-inclusion of these facilities which fell within their housing complex in deed of declaration as "common areas and facilities" — Held, not sustainable — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) — Haryana Apartment Ownership Act, 1983 (10 of 1983), Ss. 3(f)(7), 11 to 13 and 6. DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

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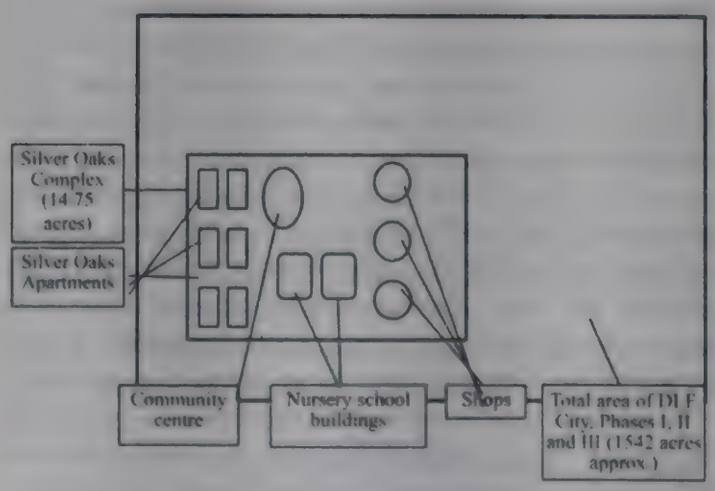
Manmohan Lowe v. State of Haryana, CWP No. 960 of 2000, order dated 9-9-2009 (P&H), reversed


Silver Oaks Complex (14.75 acres)
Silver Oaks Apartments
Community centre
Nursery school buildings
Shops
Total area of DLF City, Phases I, II and III (1542 acres approx.)

[**Ed.**: Below is the hypothetical presentation of the area of DLF City, Phases I, II and III to explain the area occupied by Silver Oaks Apartments and the position of community and commercial facilities therein:

Note.—As per the decision of the Supreme Court herein, the community centre, school buildings (two nursery schools) and shops, as constructed/developed by the coloniser (DLF in present case) are not for exclusive use of Silver Oaks Apartment owners and they are not owners of these facilities which can be used by all other inhabitants/apartment owners of the entire DLF City, Phases I, II and III colony.]

[699] — S. 3(3)(a)(iv) — "Community and commercial facilities" under — Placement/position in colony according to layout plans of colony — Mere placement of some "community and commercial facilities" in gated sub-colony/group housing area/complex, held, will not confer rights on flat/apartment owners in that gated area to claim ownership of these facilities as being part of "common areas" — *Held, quantum/number of each type of community amenity/commercial facility to be provided by coloniser under S. 3(3)(a)(iv) and its placement at various sites in colony, whether at plotted areas or group housing areas are as per layout plans approved by competent authority under the 1975 Act — Thus, plea of apartment owners of gated sub-colony Silver Oaks Apartments/complex that "community and commercial facilities" viz. schools, shops, community centre being within boundary walls of Silver Oaks complex which was "gated" and, hence these were part of common areas of Silver Oaks complex only and not of the entire colony, rejected — These facilities were part of larger area of 1542 acres of DLF City, Phases I, II and III of which Silver Oaks Group Housing (14.75 acres) was only a part — Hence, facilities were for benefit of apartment/flat owners of the entire DLF City, Phases I, II and III — Further, considering nature of these structures, held, they cannot be called as common areas and facilities which are essential for enjoyment of flats/apartments — Haryana Development and Regulation of Urban Areas Rules, 1976, Rr. 2(b) and 11(1)(e) — Haryana Apartment Ownership Act, 1983 (10 of 1983), Ss. 3(f) and 6. DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

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Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd., (2010) 9 SCC 536, distinguished

Manmohan Lowe v. State of Haryana, CWP No. 960 of 2000, order dated 9-9-2009 (P&H), reversed

(i) Haryana Development and Regulation of Urban Areas Rules, 1976

— **Rr. 2(b) and 11(1)(e)** *See* 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Ss. 3(i) and 3(f) and Ss. 11 to 13, (2014) 12 SCC 231

— Haryana Development and Regulation of Urban Areas Act, 1975 (8 of 1975), S. 3(3)(a)(iv), (2014) 12 SCC 231

— **Rr. 2(b) and 11(1)(e) and (h) r/w Form LC-IV-A, Cls. 1(c) and 1(e)** *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **Rr. 11(1)(b) and (c)** *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **R. 11(1)(c)** *See* 'Town Planning', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **R. 11(1)(e)** *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

(j) Illegal/Unauthorised constructions/Development/Encroachment

— **Frivolous litigation — Order of expeditious demolition with costs, confirmed** *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Frivolous writ petition, Arts. 226 and 136, (2011) 15 SCC 387: (2014) 2 SCC (Civ) 497

(k) Maharashtra Industrial Development Act, 1961 (3 of 1962)

— **S. 34** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 18 and 54, (2013) 14 SCC 406: (2014) 2 SCC (Civ) 763

(l) Maharashtra Ownership of Flats (Regulation of Construction, Sale, Management and Transfer) Act, 1963 (45 of 1963)

— **Ss. 2(a), 4, 8 and 11** *See* PRACTICE AND PROCEDURE — 'Adverse/Disparaging Remarks/Observations/Strictures', (2012) 13 SCC 700: (2014) 5 SCC (Civ) 414

— **S. 4(1) — Compulsory registration of agreement to sell/contract for sale — Requirement of, under** *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **S. 4(1) — Registration of sale agreement — Requirement of** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776

(m) Maharashtra Regional and Town Planning Act, 1966 (37 of 1966)

— **S. 126** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 5-A, 6, 9 and 16, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

(n) Punjab Town Improvement Act, 1922 (4 of 1922)

— **S. 72-E** *See* ADMINISTRATIVE LAW — 'Natural Justice' — Duty to give reasons/Recording of reasons/Speaking order, (2013) 14 SCC 393: (2014) 2 SCC (Civ) 671

(o) Town planning authorities

— **Public amenities — Power of local government bodies to charge fees for provision of** *See* CONSTITUTION OF INDIA, Arts. 243-Q, 243-W(a)(i) & (ii) r/w Sch. XII, Entry 17 and Ss. 265, 14 & 300-A, (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

(p) Town planning scheme

[700] — Draft scheme framed by Development Authority — Designation of 50% area for "public purpose" — Whether the same amounts to expropriation and not acquisition — Stage too premature for challenge — *Held, as authority concerned at such stage is only dealing with the issues at a draft stage and applicants have ample opportunity to file their objections and are entitled to personal hearing as required under R. 26(4), apprehensions of applicants at this stage are premature — The matter can be adjudicated before the statutory authority — However, it is too early to anticipate as to what order would be passed on their objections — In case they are aggrieved by the order passed after hearing their objections, applicants have a statutory right to approach the appropriate forum challenging the same — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40(3)(j) and (jj)(a) — Gujarat Town Planning and Urban Development Rules, 1979, R. 26(4)* (Paras 58 to 62). *Ahmedabad Municipal Corpn.* v. *Ahmedabad Green Belt Khedut Mandal*, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710: AIR 2014 SC 2377: (2014) 3 Guj LR 2516.

Bench Strength 3. Coram: **Dr B.S. Chauhan**, *Jasti Chelameswar* and *M. Yusuf Eqbal*, JJ. [Date of decision: 9-5-2014]

Martin Burn Ltd. v. Corpn. of Calcutta, AIR 1966 SC 529, followed

Tata Power Co. Ltd. v. Reliance Energy Ltd., (2009) 16 SCC 659; Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451, affirmed

— Reshuffling and reconstitution of plots under — Nature of — Divesting of title in original plots and vesting of ownership in new plots without State

acquiring any title at any stage — Analogy with consolidation proceedings *See* 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40, 45(2)(a), (b), (c), 48-A, 52, 53(a), 67, 77, 80, 81, 82, 84 and 85, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

(q) U.P. Industrial Area Development Act, 1976 (6 of 1976)

— **S. 2(d)** *See 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156*

— **Ss. 2(d) and 12** *See also* 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

[701] — Ss. 2(d), 12, 3 and 6 — Scheme of 1976 Act, stated

The 1973 Act aimed to provide for the planned development of certain areas of the State. Sections 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of the 1973 Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice-Chairman to carry out such direction. Section 12 of the 1976 Act provides for application of certain provisions of the 1973 Act including Section 41. (Paras 21.3 to 21.5)

Noida is an industrial development authority constituted under Section 3, 1976 Act. The authority under the 1976 Act can be constituted for any industrial development area and such areas would be those which have been declared as such by the State Government by a notification under Section 2(*d*), 1976 Act. The object of the industrial development authority, as is evident from Section 6, 1976 Act is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. (Paras 21.1 and 21.2)

The 1973 Act is an earlier Act whereas 1976 Act is a later Act. Incorporation of the provisions of the earlier Act into a later Act is a legislative device adopted for the sake of convenience and in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act. When such a legislation is made by incorporation, the provisions so incorporated become part and parcel of the later Act. Therefore, Section 41 of the 1973 Act shall be deemed to have been incorporated in the 1976 Act with adaptation and the authority constituted under the 1973 Act shall be deemed to be in reference to an authority constituted under the 1976 Act and the Vice-Chairman under the 1973 Act would be the Chief Executive Officer of the 1976 Act. However, the power exercised under Section 41 of the 1973 Act shall not be deemed to result in an order under Section 12 of the 1976 Act merely on the ground that Section 41 has been included in the 1976 Act by incorporation which is a device adopted for the sake of convenience. (Paras 22.1 to 22.3). *NOIDA* v. *Sarvpriya Sehkari Avas Samiti Ltd.*, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156: AIR 2013 SC 3143.

Bench Strength 2. Coram: **Chandramauli Kr. Prasad** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

— **Ss. 12 and 2(d)** *See* STATUTE LAW — 'Legislation by Incorporation or by Reference', (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

(r) U.P. Urban Planning and Development Act, 1973 (11 of 1973)

[702] — S. 17 — Applicability to schemes framed under the 1945 Cawnpore Act which were saved by S. 577 of Act 2 of 1959 — *Held, inapplicable since S. 17 is attracted only in respect of land acquired under that Act and not for schemes framed under the 1945 Act — High Court was justified in declining appellants' prayer for ordering release of land which was acquired more than 30 years ago, and a portion of land covered by the scheme had been transferred to UPSIDC, which had developed the same and allotted plots to eligible applicants — Moreover, having accepted the amount of compensation, appellants had no locus to seek direction for release of the acquired land — Cawnpore Urban Area Development Act, 1945, Ss. 53 & 60 — U.P. Nagar Mahapalika Adhiniyam, 1959 (2 of 1959), S. 577* (Paras 11 to 14). *Kailash N. Dwivedi* v. *State of U.P.*, (2011) 15 SCC 98: (2014) 2 SCC (Civ) 249: AIR 2012 SC Supp 140.

Bench Strength 2. Coram: **G.S. Singhvi** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 29-11-2011]

— **S. 41 — Order made under — Applicability of benefit of order to respondent societies and Noida** *See* 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

See also STATUTE LAW — 'Legislation by Incorporation or by Reference', (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156

[703] — Ss. 41, 3 and 4 — Noida — Constitution, objects and functions stated

The 1973 Act aimed to provide for the planned development of certain areas of the State. Sections 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of the 1973 Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice-Chairman to carry out such direction. Section 12 of the 1976 Act provides for application of certain provisions of the 1973 Act including Section 41. (Paras 21.3 to 21.5)

Noida is an industrial development authority constituted under Section 3, 1976 Act. The authority under the 1976 Act can be constituted for any industrial development area and such areas would be those which have been declared as such by the State Government by a notification under Section 2(*d*), 1976 Act. The object of the industrial development authority, as is evident from Section 6, 1976 Act is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. (Paras 21.1 and 21.2). *NOIDA* v. *Sarvpriya Sehkari Avas Samiti Ltd.*, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156: AIR 2013 SC 3143.

Bench Strength 2. Coram: **Chandramauli Kr. Prasad** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

LOSS INCURRED DURING CURRENCY OF CONTRACT/RECOVERY OF BENEFIT CONFERRED

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See LOCAL GOVERNMENT — 'Town Planning'

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See HUMAN AND CIVIL RIGHTS

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966 (37 OF 1966)

See LOCAL GOVERNMENT — 'Town Planning'

See also LAND ACQUISITION AND REQUISITION

MAHARASHTRA RENT CONTROL ACT, 1999 (18 OF 2000)

See RENT CONTROL AND EVICTION

MAINTAINABILITY

See CONSTITUTION OF INDIA — 'Article 32' — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Public Interest Litigation

See also CONSUMER PROTECTION — 'Consumer Forums'

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

MAINTAINABILITY OF SLP

See CONSTITUTION OF INDIA — 'Article 136'

MAINTAINABILITY OF WRIT PETITION

See CONSTITUTION OF INDIA — 'Article 226'

MAINTENANCE

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See also FAMILY AND PERSONAL LAWS

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See PRACTICE AND PROCEDURE

MALA FIDES/COLOURABLE EXERCISE OF POWER

See ADMINISTRATIVE LAW — 'Natural Justice'

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MALA FIDES/FRAUD/FORGERY

— Estoppel — No estoppel against fraud *See* PROPERTY LAW — 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— Fraudulent/Sham transfers — Proof of *See* RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

MALICE IN LAW AND MALICE IN FACT

See NATURAL JUSTICE — 'Mala Fides/Colourable Exercise of Power'

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MATTERS AT LARGE/JURISDICTION

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

MCI (PROFESSIONAL CONDUCT, ETIQUETTE AND ETHICS) REGULATIONS, 2002

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics'

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1. ANDHRA PRADESH MOTOR VEHICLES RULES, 1989

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3. MOTOR VEHICLES ACT, 1939

[704] — **S. 110-A — Compensation — Determination of — Loss of future prospects — Factors to be considered** — *Appellant aged 32 yrs, a graduate in science and diploma-holder in Mechanical Engineer with specialisation in refrigeration and air conditioning working as Product Design Engineer suffered permanent disability of 70% for amputation of right arm due to accident — High Court increased amount of compensation awarded by Tribunal by adding 50% of salary for future prospects of increase and cost of prosthesis — On basis of evidence on record, Supreme Court in order to do complete justice redetermined amount of compensation and awarded pecuniary and non-pecuniary damages by awarding compensation for medical expenses including reasonable cost of prosthesis, loss of earning during treatment, loss of future earnings and damages for pain and suffering, loss of amenities, loss of expectation of life — Motor Vehicles Act, 1988, Ss. 166 and 168*

The appellant got his right arm severed from his shoulder in an accident due to rash and negligent driving of bus in which he was travelling. Doctors certified 70 % permanent disability for injuries sustained in the accident. The Tribunal awarded a compensation of Rs 3,20,000 as against claim of Rs 12 lakhs. The High Court raised compensation amount to Rs 6,54,800 taking into account 50% increase in salary for future prospects, multiplier of 16 and loss of earning capacity to 70% in view of permanent disability based on salary of Rs 3000 per month plus Rs 50,000 on medical expenses, attendant's charges and pain and suffering totalling to Rs 7,04,800. In addition, the High Court awarded Rs 50,000 towards cost of prosthesis on the lesser side.

Before the Supreme Court challenge was on the ground that permanent disability at 70% is wrongly assessed which should have been 100% and damages awarded were on the lesser side.

Modifying the award and increasing the compensation,

Held :

The Tribunal in its award has noticed that the claimant had to go to hospital every 10 days for treatment. He was admitted in different hospitals and was under treatment as indoor patient for about one-and-a-half months. The claimant's hand was amputated and skin was grafted. In spite of the same, no amount has been allowed towards loss of earning during the period of treatment nor any amount allowed towards future medical expenses. From the High Court's judgment and award passed by the Tribunal it is clear that the claimant placed evidence to suggest that the cost of prosthesis was Rs 75,000. It was accepted at the Bar that the cost of prosthesis was Rs 1,60,000. In spite of the same the Tribunal did not chose to allow any amount towards prosthesis and the High Court allowed a petty amount of Rs 50,000 for the same. No separate amount has been allowed towards travelling to the hospitals though the claimant was required to go to attend the hospital every 10 days for treatment. A meagre sum of Rs 25,000 has been allowed by the High Court towards pain and suffering. Having regard to the fact that the Tribunal and the High Court have not allowed reasonable amount for different pecuniary and the non-pecuniary damages, with a view to do complete justice to the claimant the amount of compensation is redetermined to a total of Rs 11,64,300 with interest @ 12%. (Paras 15 to 17). *Neerupam Mohan Mathur* v. *New India Assurance Co.*, (2013) 14 SCC 15: (2014) 2 SCC (Civ) 388: AIR 2013 SC 3378: (2013) 99 ALR 864: (2013) 128 AIC 133.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 1-7-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed

Neerupam Mohan Mathur v. Pritam Singh, FAO No. 693 of 1989, decided on 6-9-2010 (P&H) sub nom New India Assurance Co. Ltd. v. Pritam Singh, FAO No. 758 of 1989, modified

— S. 110-B *See* 'Motor Vehicles Act, 1988', Ss. 166 to 168, 163-A and Sch. II, (2013) 15 SCC 45: (2014) 4 SCC (Civ) 384

4. MOTOR VEHICLES ACT, 1988

— **Ss. 3, 4, 180, 19, 20(2), 132, 134, 185, 189 and 192 (with regard to licensing), Ss. 39, 53, 192, 146, 196, 187, 136 and Ch. V (with regard to vehicular fitness)**

and Ss. 119, 122, 127, 128, 129, 183, 184, 189, 186, 194 and 192(a) (with regard to use of roads) — Enforcement of laws relating to road safety and prevention of accidents — Directions issued *See* CONSTITUTION OF INDIA — 'Article 32' — Exercise of power under by Supreme Court — Relief — Executive or Legislative action/inaction or gaps — Orders/directions redressing/filling — Judicial legislation, Arts. 32 and 21, (2014) 6 SCC 36: (2014) 3 SCC (Civ) 36

[705] — Ss. 15, 147 and 149 — Third-party risks vis-à-vis own damage cases — Insurer immune from liability — *Held, in such cases insurer has to indemnify insured and may recover paid sum from insured, if advised — Considering peculiar facts of case, insurer was directed not to recover paid amount from insured* (Para 3). *United India Insurance Co. Ltd.* v. *Babu Ram Thakur*, (2013) 11 SCC 424: (2014) 1 SCC (Civ) 562: (2012) 114 Cut LT 688.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Dipak Misra*, JJ. [Date of decision: 28-2-2012]

National Insurance Co. Ltd. v. Laxmi Narain Dhut, (2007) 3 SCC 700: (2007) 2 SCC (Cri) 142, applied

National Insurance Co. Ltd. v. Swaran Singh, (2004) 3 SCC 297: 2004 SCC (Cri) 733, distinguished

— Ss. 39, 43 and 192 — Non-registration of vehicle — Vehicle insurance — Liability of insurer *See* INSURANCE — 'Motor insurance', (2014) 9 SCC 324: (2014) 5 SCC (Civ) 43

[706] — Ss. 39, 43 and 192 — Registration of motor vehicle — Mandatoriness of — Temporary registration — Duration for which valid — Extension when permissible — *Held, using a vehicle on public road without any registration is an offence punishable — No person shall drive a motor vehicle in any public place without valid registration — Further held, temporary registration is valid only for a period of one month that can be extended only where chassis of a vehicle with temporary registration is detained in workshop beyond one month for being fitted with a body or for unforeseen circumstances beyond control of owner* (Para 11). *Narinder Singh* v. *New India Assurance Co. Ltd.*, (2014) 9 SCC 324: (2014) 5 SCC (Civ) 43: AIR 2014 SC 3761: (2014) 107 ALR 726: (2014) 4 CPJ 11: (2014) 144 AIC 235: (2014) 3 KLT 1074: (2014) 3 CPR 609.

Bench Strength **2**. Coram: **M. Yusuf Eqbal** and *P.C. Ghose*, JJ. [Date of decision: 4-9-2014]

— S. 43 *See* S. 39

[707] — S. 72(2) — Age-limit of vehicles that may be used for stage carriage — Held, can be prescribed by RTA — Expression "specified description" comprehends fixing of age of vehicles — *Words and Phrases — "Specified description" — Meaning of*

The short controversy in this case is whether the Regional Transport Authority can prescribe that a stage carriage which is more than 15 years old cannot ply.

Dismissing the appeal,

Held :

Under Section 72(2) of the Motor Vehicles Act, 1988 the Regional Transport Authority may grant the permit for a stage carriage of a "specified description". The expression "specified description" is very wide and, therefore, the authorities under the Motor Vehicles Act, 1988 are perfectly justified in placing such a restriction for grant of the permit in public interest. This would include fixing the age of the vehicle also. Restricting the age of the vehicle for the grant of permit for a stage carriage is in public interest and therefore, the authorities under the Act are justified in placing such a restriction for grant of the permit. (Para 5). *K.M. Ismeth Ummer* v. *Regional Transport Authority*, (2011) 15 SCC 288: (2014) 2 SCC (Civ) 380: (2010) 4 KLT 597.

Bench Strength **2**. Coram: *Markandey Katju* and *T.S. Thakur*, JJ. [Date of decision: 4-8-2010]

— S. 140 *See* S. 163-A

— S. 146 *See* S. 166

— S. 147 *See also* S. 15; S. 149; S. 166

[708] — S. 147 — Representative(s) of owners of goods — If covered by insurance policy in question — Accident involving a goods vehicle, a lorry — Amongst deceased victims, two were of clerical cadre working as Gumasthe and were accompanying the goods — Premium paid for covering risk of persons "employed in connection with the operation and/or loading/unloading of motor vehicle" — Disjunctive clauses indicated by use of "and/or" — Whether deceased covered — *Held, High Court clearly fell in error in holding that insurer is not liable — In Cl. IMT 17 for which premium was paid: "persons employed in connection with the operation" is clearly over and above coverage provided by policy to "persons employed in connection with loading/unloading of motor vehicle" — Obviously, gumasthe deceased would be covered by expression "persons employed in connection with the operation" and operation of aforesaid clause has wrongly been restricted and limited only to persons employed in connection with loading/unloading of motor vehicle. Hanumanagouda* v. *United India Insurance Co. Ltd.*, (2014) 9 SCC 341: (2014) 5 SCC (Cri) 31: (2014) 5 SCC (Civ) 48: (2014) 1 CTC 661: (2015) 1 Mah LJ 564: (2014) 2 LW 860: (2014) 103 ALR 747: (2014) 135 AIC 45.

Bench Strength 3. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh**, JJ. [Date of decision: 28-1-2014]

United India Insurance Co. Ltd. v. Mariyamma, MFA No. 2451 of 2002, decided on 17-10-2005 (KAR), reversed

[709] — Ss. 147 and 149 — Liability of insurer — Passengers carried in goods vehicle, in violation of policy terms — MACT fixed liability on insurance company by awarding compensation of Rs 70,000 — In appeal High Court enhanced compensation to Rs 1,64,000 — Tenability of — *Held, when it was established that persons belonging to marriage party were carried in goods vehicle, it was clear-cut violation of policy terms — Hence, insurer not liable — However, considering peculiar facts of case, insurer directed to not to recover sums already paid to claimants and claimants given liberty to recover balance amount from estate of deceased owner* (Para 8). *National Insurance Co. Ltd.* v. *Savitri Devi*, (2013) 11 SCC 554: (2012) 4 SCC (Cri) 59: (2014) 1 SCC (Civ) 625.

Bench Strength 2. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 31-1-2012]

National Insurance Co. Ltd. v. Bommithi Subbhayamma, (2005) 12 SCC 243; National Insurance Co. Ltd. v. Rattani, (2009) 2 SCC 75: (2009) 1 SCC (Civ) 398: (2009) 1 SCC (Cri) 669; National Insurance Co. Ltd. v. Baljit Kaur, (2004) 2 SCC 1: 2004 SCC (Cri) 370, followed

National Insurance Co. Ltd. v. Savitri Devi, FAO No. 143 of 2000, decided on 28-7-2005 (HP), reversed

[710] — Ss. 147, 149, 166, 168 and 173 — Limit on statutory liability of insurer under S. 147(1) proviso (i) only to the amount payable under Workmen's Compensation Act, 1923 (WC Act) — Held, said limit can be increased contractually by purchase of additional insurance cover — *S. 147(1) proviso (i) limiting statutory liability of insurer to liability in respect of bodily injury or death arising out of and in the course of employment in a motor vehicle, of employee of owner of vehicle/insured person to only the liability covered under WC Act — Claimant employed as a cleaner of a vehicle — Met with accident during the course of his said employment while travelling in that vehicle — Held, liability of insurer in such a case as the present case provided an insurance policy has been taken by owner of the vehicle by making payment of extra premium and the policy contains a clause to that effect — In present case, insured/owner of vehicle did not appear before Claims Tribunal or High Court — Insurer not pursuing appearance of insured owner and allowing proceeding to continue in his absence — No evidence adduced by insurer to establish that as per the terms and conditions of policy extra premium had not been paid — Except the plea denying liability beyond that covered by WC Act, no alternative plea taken by insurer that in case the claimant was held entitled to compensation beyond the liability under WC Act, the same was not payable in the absence of payment of extra premium — Claims Tribunal awarding compensation of Rs 1,42,800 to claimant — On these facts and in view of the aforesaid law on the issue concerned, order of High Court holding that liability of respondent Insurance Company was restricted to the one under WC Act which would be Rs 32,091 and balance amount (i.e. Rs 1,42,800 — Rs 32,091) would have to be shouldered by insured, held, not sustainable — Hence, set aside — Insurance Company directed to pay balance amount also (along with interest) to claimant — Workmen's Compensation Act, 1923, S. 3*

The appellant, employed as a cleaner of a vehicle (matador van), met with a road accident while travelling in that vehicle as a cleaner. As per the appellant cleaner, the driver of the said vehicle drove the vehicle in a rash and negligent manner and consequently the vehicle dashed against a lorry and the appellant sustained grievous injuries. The appellant laid a claim against the owner and the insurer of the said vehicle before the Motor Accidents Claims Tribunal.

Since the owner of the vehicle failed to appear before the Claims Tribunal, the matter proceeded only against the Insurance Company. The Insurance Company submitted that since the claimant was travelling in the matador van as a cleaner, his remedy was to claim compensation under the Workmen's Compensation Act, 1923 and the Tribunal had no jurisdiction to entertain the claim filed by the cleaner. However, the Tribunal after referring to the law laid down in *R. Maheshwari case*, ILR 2003 Kar 3562, considering the evidence led by the parties and assessing the injury sustained by the claimant and the expenses incurred on the treatment, awarded a sum of Rs 1,42,800 towards compensation and directed the Insurance Company to pay the entire compensation.

The Insurance Company assailed the said judgment and order of the Tribunal before the High Court. The High Court held that since the claimant was a cleaner of the vehicle, the liability of the Insurance Company was restricted to the extent payable under the Workmen's Compensation Act which would be Rs 32,091 and the balance would have to be shouldered by the insured/owner of the vehicle. The High Court further directed that if an excess amount had been deposited, the same would be refunded to the Insurance Company. Aggrieved thereby, the claimant had preferred the instant appeal.

Allowing the appeal,

Held :

The liability to pay compensation in respect of death or bodily injury to an employee should not be restricted to that payable under the Workmen's Compensation Act but should be more or unlimited. However, the determination of that question in case of a motor accident would depend upon whether an insurance policy has been taken by the vehicle owner by making payment of extra premium and whether the policy also contains a clause to that effect. Thus, the compensation payable to the employee can be expanded provided the contractual document which is the policy of insurance incorporates such clause regarding the premium to be paid taking into account the nature of the policy. (Paras 20 and 21)

The rider no doubt is that the statutory liability cannot be more than what is required under the statute under Section 95 of the old MV Act i.e. under Section 147(1) proviso (i) of the new MV Act, but the same cannot bind the parties or prohibit them from contracting or creating unlimited or higher liability to cover wider risk and the insured is bound by the terms of the contract specified in the policy in regard to unlimited or higher liability as the case may be. Thus, it is although correct that limited statutory liability cannot be extended to make it unlimited or higher, it is also manifestly clear that insofar as the entitlement of the claimant cleaner of the vehicle is concerned, the same cannot be automatically restricted only to the compensation amount that may be claimed under the Workmen's Compensation Act and he is entitled to compensation even under the Motor Vehicles Act but which will depend upon the terms and conditions of the policy of insurance. (Para 23)

Thus, the High Court was not correct in holding that the claimant was not entitled to any compensation over and above the liability under the Workmen's Compensation Act and hence the direction issued by the High Court that the Insurance Company will be liable to pay only Rs 32,091 and the balance will have to be shouldered by the insured/owner of the vehicle is fit to be struck down as invalid as the High Court had failed to examine the nature and clauses of the insurance policy in question, which was not produced even before the Tribunal. (Para 22)

The Insurance Company had neither produced the policy of insurance nor led any evidence to establish that as per the terms and conditions of policy extra premium had not been paid. Further, the owner of the vehicle did not appear before the Tribunal or the High Court but the Insurance Company did not pursue for his appearance. The High Court overlooked that the apportionment of the amount of compensation between the owner of the vehicle and the Insurance Company was an inter se dispute between the Insurance Company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the Tribunal. If the Insurance Company acquiesced with the situation and allowed the proceeding to continue even in absence of the insured/owner of the vehicle who has been held liable to pay the amount even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the Insurance Company and the claimant cannot be made to suffer. (Paras 24 and 25)

The plea of the Insurance Company all through was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the Insurance Company had not taken the alternative plea either before the Tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. This plea was never put to test or gone into by the Claims Tribunal since the Insurance Company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the Insurance Company straightaway at the appellate stage. (Para 26)

Consequently, the High Court's view impliedly holding that the claimant was not entitled to any compensation under the Motor Vehicles Act beyond the entitlement under the Workmen's Compensation Act so as to leave it open to the Insurance Company to realise it from the owner of the vehicle at the belated stage of appeal before the High Court when the Insurance Company had failed even to urge the alternative plea regarding non-payment of extra premium by the owner of the vehicle and had even reconciled to the fact that the owner of the vehicle had failed to appear in spite of service of notice, is not fit to be sustained. Hence, the respondent Insurance Company is directed to pay the balance amount also beyond Rs 32,091 along with interest to the claimant. (Paras 27, 30 and 31). *Ramchandra* v. *United India Insurance Co. Ltd.*, (2013) 12 SCC 84: (2014) 2 SCC (L&S) 686:

(2013) 4 SCC (Cri) 158: (2014) 1 SCC (Civ) 286: AIR 2013 SC 2561: (2013) 100 ALR 227: (2013) 129 AIC 154: (2013) 5 LW 129.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Gyan Sudha Misra**, JJ. [Date of decision: 2-8-2013]

National Insurance Co. Ltd. v. Prembai Patel, (2005) 6 SCC 172: 2005 SCC (L&S) 819; New India Assurance Co. Ltd. v. C.M. Jaya, (2002) 2 SCC 278: 2002 SCC (Cri) 325, followed

United India Insurance Co. Ltd. v. Ramachandra, MFA No. 6711 of 2004, decided on 17 4 2007 (KAR), reversed

[711] — Ss. 147 and 166 — Extension of statutory benefits of insurance of third parties to owner of vehicle when he is injured/dies in accident involving insured vehicle — Impermissibility of — *Accident involving insured vehicle resulting in death of owner/insurer — MACT awarded compensation of Rs 3,20,000 and that was confirmed by High Court — Legality — Held, statutory liability of insurer under 1988 Act is only for indemnifying insured against third party or in respect of damages to property — As deceased was owner and insured himself, statutory benefits meant for third parties cannot be extended to him* (Paras 8 and 9). *New India Assurance Co. Ltd.* v. *Prabha Devi*, (2013) 14 SCC 719: (2014) 3 SCC (Civ) 519: AIR 2013 SC Supp 235.

Bench Strength **2**. Coram: *S.S. Nijjar* and *P.C. Ghose*, JJ. [Date of decision: 13-3-2013]

Dhanraj v. New India Assurance Co. Ltd., (2004) 8 SCC 553: 2005 SCC (Cri) 363, applied

— S. 149 *See also* S. 15; S. 147; S. 166

[712] — Ss. 149, 147, 166, 168 and 173 — Third party risk — Insurer's liability — Attempt by insurer to disown — Duty to try and implead owner/insured person — *Absence of insured i.e. owner of vehicle before Claims Tribunal, despite service of notice — Plea by insurer in case of, that it is owner of vehicle who is liable to pay compensation — Duty of insurer to adduce evidence in support of said plea before Tribunal in such cases — Benefit thereof in subsequent proceeding instituted by insurer after passing of award to realise the amount from owner of vehicle — Indicated and emphasised — Contract Act, 1872, Ss. 69 and 70*

An important step which the insurance companies generally fail to take during the proceedings before the Motor Accidents Claims Tribunal is related to non-appearance of the owner of the vehicle in spite of service of notice. The insurance companies although contend before the Claims Tribunal and even at the appeal stage that it is the owner of the vehicle which is liable to bear a part or the entire liability of making the payment of compensation to the claimant in view of the nature of policy, or even due to invalid licence held by the driver of the owner of the vehicle, the insurance company fails to lead any evidence to establish as to how the owner and not the insurance company is liable to pay the compensation and even submits to non-appearance of the owner of the vehicle whose appearance is vital in view of inter se contest between the owner of the vehicle and the insurance company. (Para 28)

In absence of the owner of the vehicle, when the Motor Accidents Claims Tribunal or the High Court leaves it open to the insurance company to subsequently realise the amount from the owner of the vehicle by instituting a fresh proceeding in view of the ratio of *Susamma Thomas case*, (1994) 2 SCC 176, it gives rise to a fresh proceeding between the owner and the insurance company putting unnecessary burden on the Motor Accidents Claims Tribunal to try the issue all over again. In fact, if the insurance company were to succeed in establishing by leading cogent evidence at the initial stage itself before the Tribunal that it is the owner of the vehicle which is liable to pay even if the evidence is ex parte in nature, it would at least facilitate the issue in the subsequent proceeding when the insurer initiates proceeding for realising the amount from the owner/insured. But in absence of such evidence, the insurer/companies are the loser and enures advantage to the owner who happens to gain by choosing not to appear. The insurance companies would fare better if they were to address this issue before the Tribunal itself instead of becoming wiser at the stage of appeal. What is wished to be emphasised is that if the owner chooses not to appear before the Tribunal although his appearance is necessary in a given case, the insurance company would do well instead of acquiescing with their absence to their detriment giving an upper edge to the owner at their own peril. (Para 29). *Ramchandra* v. *United India Insurance Co. Ltd.*, (2013) 12 SCC 84: (2014) 2 SCC (L&S) 686: (2013) 4 SCC (Cri) 158: (2014) 1 SCC (Civ) 286: AIR 2013 SC 2561: (2013) 100 ALR 227: (2013) 129 AIC 154: (2013) 5 LW 129.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Gyan Sudha Misra**, JJ. [Date of decision: 2-8-2013]

— S. 149(2) *See also* S. 170(b); S. 173

[713] — S. 149(2) and 170(b) — Defences available to insurer — Held, in absence of permission under S. 170(b), insurer cannot raise any defence except those mentioned under S. 149(2) and cannot challenge award of MACT — *In present case, insurer did not seek permission from MACT to challenge claims on other grounds — Hence, challenge to award of MACT by insurer on such grounds, held, untenable*

The deceased was a renowned doctor serving as lecturer in Homeopathic College and also carried on private practice. The deceased died on the spot due to rash and negligent driving of offending vehicle when she was driving her car. The appellant-claimant is the daughter of the deceased. The appellant-claimant along with her father filed claim petitions before MACT contending that her mother's income was Rs 12,000 per month. Based on that, she claimed Rs 27,00,000 before MACT as compensation. After considering the evidence on record, MACT awarded compensation of Rs 10,62,000 with 6% interest thereon. In appeal, the High Court reduced it to Rs 8,00,000. Further, the High Court directed that 60% of equivalent amount be deposited in any Nationalised Bank for period of five years. Hence this appeal.

Allowing the appeal,

Held :

It should have been taken into consideration that the deceased was in public employment. Therefore, it was a stable employment for a period of another seven years and there could have been revision of wages and promotional benefits accrued in her favour if she was alive. Therefore, for determining the annual income of the deceased, the principles laid down in *Sarla Verma*, (2009) 6 SCC 121 should have been applied to the case of the appellant-claimants by taking into consideration the monthly salary of the deceased at Rs 12,000 to which 30% should have been added as future prospects of income as mentioned above and that much amount could have been taken as monthly income of the deceased for the purpose of determining the compensation towards the loss of dependency of the appellant-claimants. (Para 15)

This aspect of the matter was not taken into consideration by the Tribunal while awarding compensation. Nonetheless, it has accepted the claim made by the appellant-claimants that the salary of the deceased was Rs 12,000 per month and the multiplier 11 was applied and awarded compensation of Rs 10,62,000. The same was erroneously interfered with by the High Court in the appeal filed by the respondent-insurer though it had no right to challenge the quantum of compensation as it had available to it only the limited defences as provided under Section 149(2) of the Motor Vehicles Act, 1988 in the absence of permission from the Tribunal to avail of other defences as required under Section 170(*b*) of the Act. (Paras 16 to 19)

Thus, the award of compensation of Rs 10,62,000 awarded by the Tribunal is restored with interest at 6% per annum, payable from date of filing of claim petition till date of payment. (Para 19).

Rekha Jain v. *National Insurance Co. Ltd.*, (2013) 12 SCC 202: (2014) 2 SCC (L&S) 562: (2013) 4 SCC (Cri) 122: (2014) 1 SCC (Civ) 300: AIR 2013 SC 3458: (2013) 100 ALR 254: (2013) 129 AIC 206: (2013) 4 LW 334.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 1-8-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Cri) 1002, para 24; National Insurance Co. Ltd. v. Nicolletta Rohtagi, (2002) 7 SCC 456: 2002 SCC (Cri) 1788, applied

National Insurance Co. Ltd. v. Rekha Jain, MACA No. 579 of 2007, order dated 24-2-2011 (Ori), reversed

[**Ed.**: *See also* now the three-Judge Bench decisions in *Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179 and *Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191.]

[714] — Ss. 158(6) and 166(4) — Compliance with — Detailed directions for compliance with mandatory provisions of S. 158(6) and S. 166(4) already issued by Supreme Court in *Jai Prakash*, (2010) 2 SCC 607 — Hence, no further directions issued (Paras 37 to 39). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

— S. 163-A *See also* S. 166; S. 168; S. 173

[715] — Ss. 163-A and 140 — Scope of S. 163-A — S. 163-A whether governed by "fault liability principle" or "no-fault liability principle" — Matter referred to larger Bench — *Supreme Court in instant case not agreeing with the view taken by two-Judge Bench of Supreme Court in* Sinitha, *(2012) 2 SCC 356 that S. 163-A is founded on "fault liability principle" — Hence, matter referred to a larger Bench for correct interpretation of scope of S. 163-A — Constitution of India, Art. 141. United India Insurance Co. Ltd.* v. *Sunil Kumar*, (2014) 1 SCC 680: (2014) 1 SCC (Civ) 642: (2013) 6 CTC 891: (2013) 4 KLT 488: (2014) 1 LW 556.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 29-10-2013]

Oriental Insurance Co. Ltd. v. Hansrajbhai V. Kodala, (2001) 5 SCC 175: 2001 SCC (Cri) 857, held, doubted

National Insurance Co. Ltd. v. Sinitha, (2012) 2 SCC 356: (2012) 1 SCC (Civ) 881: (2012) 1 SCC (Cri) 659, doubted, and matter referred to larger Bench

[716] — Ss. 163-A, 166 and 168 and Sch. II — Appropriate multiplier — Determination of — Deceased aged 56 yrs having average income of Rs 5000 per month — *Held, Tribunal was right while considering 8 as a multiplier — No other error in the judgment delivered by High Court*

except the enhanced multiplier, consequently compensation towards loss of dependency reduced — Direction issued for payment of compensation with interest after recalculation of amount by reducing the multiplier from 11 to 8, as directed by Tribunal — High Court's finding regarding absence of contributory negligence and consequent enhancement of compensation left undisturbed (Para 7). *Oriental Insurance Co. Ltd.* v. *Vithabai*, (2011) 15 SCC 122: (2014) 4 SCC (Cri) 540: (2014) 2 SCC (Civ) 263: AIR 2011 SC 2838: (2011) 89 ALR 460: (2011) 107 AIC 49.

Bench Strength 2. Coram: *Dr M.K. Sharma* and **Anil R. Dave**, JJ. [Date of decision: 5-7-2011]

[717] — S. 163-A and Sch. II — Scheme of Sch. II, explained (Para 22). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

— **S. 163-A r/w Sch. II** *See* CONSUMER PROTECTION — 'Services' — Medical practitioners/services, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

[718] — S. 163-A(1) and Sch. II r/w S. 163-A(3) — Non-applicability of Sch. II in present scenario — Sch. II needs amendment — *Held, Sch. II as was enacted in 1994 has now become redundant, irrational and unworkable due to changed scenario including the present cost of living, current rate of inflation and increased life expectancy — Central Government has failed to amend Sch. II for 19 yrs in spite of repeated observations of Supreme Court — Directions hence issued to Central Government to amend Sch. II Table keeping in view the present cost of living, subject to amendment of Sch. II as proposed or may be made by Parliament — Till such amendment is made in cases where application is made under S. 163-A, directed that for death of children up to age of 5 yrs, the claimants shall be entitled to fixed compensation of Rs 1 lakh and for death of persons more than 5 yrs of age, the claimants shall be entitled to fixed compensation of Rs 1.5 lakhs or the amount as may be determined in terms of Sch. II, whichever is higher. Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength 2. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

— **S. 166** *See* S. 147; S. 149; S. 163-A; S. 168; S. 171; S. 173

See also TORT LAW — 'Negligence', (2014) 2 SCC 735: (2014) 2 SCC (Civ) 192

[719] — S. 166 — Compensation — Computation of — Loss of future earnings — Partial permanent disability of 60% — Loss of career prospects — Employability in a career with lesser prospects — Relevance — *Held, considering particularly evidence of doctor stating that appellant suffered 60% disability of total body, and in cross-examination that appellant requires further treatment, appellant having to take up desk job in private bank for permanent disability, as he could not continue as a Quality Engineer holding BE in Metallurgy as said job required moving from one place to other place — Reasoning of High Court that appellant has not suffered any financial loss because of permanent disability having regard to fact of subsequent employment in private bank, cannot be sustained — Once permanent disability is fixed, taking into consideration its impact on the employment/profession of claimant, Tribunal rightly determined compensation Rs 12,840 + 12 + 17 — Rs 26,19,360 towards loss of future earnings, and taking into consideration 60% permanent disability, awarded actual compensation under the "loss of future earnings" at Rs 15,71,616 by rounding off to Rs 15,72,000* (Para 10). *Dinesh Singh* v. *Bajaj Allianz General Insurance Co. Ltd.*, (2014) 9 SCC 241: (2014) 5 SCC (Cri) 26: (2014) 4 SCC (Civ) 797: (2014) 105 ALR 476: (2014) 139 AIC 55.

Bench Strength 3. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 23-4-2014]

Bajaj Allianz General Insurance Co. Ltd. v. Dinesh Singh, MFA No. 4502 of 2007, order dated 16-12-2008 (KAR), reversed

[720] — S. 166 — Compensation — Computation of — Partial permanent disability — Loss of earnings, amenities and marriage prospects — Appellant/claimant, bachelor, BE degree-holder in Metallurgy, aged 24 working as Quality Engineer getting monthly salary of Rs 17,200 — *Grievous fracture injuries caused to knee and also left hand — Left leg amputated — In-patient for two months and presently walking with artificial limb losing prospects of getting married — Had to resign from his job as Engineer to take up a desk job in private bank which he could lose due to recession in economy — Though appellant contended that he was earning Rs 17,200 p.m., but in absence of any documentary evidence, Tribunal as well as High Court, took monthly salary of appellant at Rs 12,840 as evidenced by Ext. P-35 — Held, no error in findings by Tribunal and High Court — However, High Court committed error in holding that appellant was out of employment for*

only six months, whereas in fact it was for 2 yrs — Loss of earnings would be Rs 12,840 + 24 — Rs 3,08,160, which Tribunal has rightly awarded — Also, for "loss of amenities" and "loss of marriage prospects", held, upon enhancement, appellant entitled to Rs 3,50,000 under "loss of amenities of life" and Rs 1,00,000 under "loss of marriage prospects" — Total compensation Rs 33,10,160 granted with interest @ 6% p.a. from date of filing petition before Tribunal till date of payment (Paras 8 to 18). *Dinesh Singh* v. *Bajaj Allianz General Insurance Co. Ltd.*, (2014) 9 SCC 241: (2014) 5 SCC (Cri) 26: (2014) 4 SCC (Civ) 797: (2014) 105 ALR 476: (2014) 139 AIC 55.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 23-4-2014]

Bajaj Allianz General Insurance Co. Ltd. v. Dinesh Singh, MFA No. 4502 of 2007, order dated 16-12-2008 (KAR), reversed

[721] — S. 166 — Compensation — Computation of — Partial permanent disability of 60% — "Pain and agony" — *Appellant hospitalised as in-patient for a long time, operated upon twice, including amputation of left leg, and presently moving with assistance of an artificial limb, and still having to take treatment — Loss of limb causes lot of pain to any living being, held, compensation under head "pain and agony" enhanced from Rs 70,000, to Rs 1,20,000 — High Court erred in reducing compensation payable to appellant under this head* (Para 11). *Dinesh Singh* v. *Bajaj Allianz General Insurance Co. Ltd.*, (2014) 9 SCC 241: (2014) 5 SCC (Cri) 26: (2014) 4 SCC (Civ) 797: (2014) 105 ALR 476: (2014) 139 AIC 55.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 23-4-2014]

Bajaj Allianz General Insurance Co. Ltd. v. Dinesh Singh, MFA No. 4502 of 2007, order dated 16-12-2008 (KAR), reversed

[722] — S. 166 — Compensation — Computation of — Permanent disability — Appellant claimant, a vegetable vendor aged about 24 yrs suffering 85% functional disability in motor accident in which his right leg was amputated — *Held, claimant entitled to Rs 17,90,100 under the head of "loss of future income" including 50% increase in future, cost of litigation Rs 25,000, medical and incidental costs Rs 1,00,000, loss of amenities Rs 75,000, loss of marriage prospects Rs 50,000, pain and suffering Rs 75,000, and cost of artificial leg Rs 50,000, thus claimant entitled to total compensation of Rs 21,65,100 with interest @ 9% p.a.* (Paras 13 to 17). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, followed

Syed Sadiq v. G. Thippaiah, MFA No. 1131 of 2011, decided on 31-10-2011 (KAR), reversed

[723] — S. 166 — Compensation — Cost of litigation — Claimant, vegetable vendor suffering 85% functional disability in motor accident — *Held, entitled to litigation costs amounting to Rs 25,000 — CPC, 1908, S. 35* (Para 14). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327, followed

[724] — S. 166 — Compensation — Determination of — Proof of income — When not mandatory — Self-employed labour in unorganised sector — Claimant, a vegetable vendor sustaining 85% functional disability in motor accident — *Held, cannot be expected to produce documents to prove his monthly income — Tribunal as well as High Court erred in asking for the same — Considering present state of economy and rising prices in agricultural products, held, vegetable vendor reasonably capable of earning Rs 6500 p.m. — Compensation awarded accordingly* (Paras 8 and 9). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

[725] — S. 166 — Compensation — Income — Calculation of prospective increment of self-employed people — *Claimant, a vegetable vendor, aged about 24 yrs suffering 85% functional disability in motor accident — Held, is entitled to 50% increment in future prospects of income* (Para 10). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah

LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength 2. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167, applied

[726] — S. 166 — Compensation — Just compensation — Deceased driver of R-1 Transport Corporation — Aged 40 yrs — Salary certificate showing gross wages as Rs 9559 — *Actual wages paid Rs 5565, after making certain deductions from the same — Wage slip not created or manufactured by appellants for getting higher compensation — Neither challenged before Supreme Court — Held, after having critically examined the award of the Tribunal, finding no illegality and perversity in the same as total amount of compensation was rightly assessed at Rs 11,76,400 and the amount of interest has also been reasonably worked out at 6% per annum — Being a fit case where amount of compensation awarded by the Tribunal has to be restored, judgment and order passed by Division Bench of High Court set aside* (Para 9). *Sharanamma* v. *North-East Karnataka RTC*, (2013) 11 SCC 517: (2014) 1 SCC (Civ) 603.

Bench Strength 2. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 19-1-2012]

North-East Karnataka RTC v. Sharanamma, MFA No. 4235 of 2007, decided on 20-8-2008 (KAR), reversed

[727] — S. 166 — Compensation — Just compensation under — Injury with permanent disability — Loss of future earnings and future medical expenses — Loss of expectation of life — *Permanent disability of about 50% of left lower limb, 40% of right upper limb and 39% of the whole body disabling manual labour, agriculture or any other work involving sitting or standing and having to undergo two more operations to correct angulation and malunion deformity of the bones of left leg — High Court in appeal granting a meagre enhancement of Rs 48,110 to compensation of Rs 2,14,330 with interest @ 6% awarded by Tribunal — Held, while assessing the compensation, Tribunal and High Court did not keep in view the principles laid down by Supreme Court for assessing compensation under different heads — As the matter is 8 yrs old it will be just and proper to award total compensation of Rs 6,00,000 to the appellant*

It can only be a matter of sheer imagination as to how much pain and agony the appellant must have suffered as a result of the injuries caused in the accident and consequential permanent disability. He has been totally disabled from doing the work of coolie which he was doing prior to the accident. He has serious problem in sitting or standing. His leg has been shortened by 4 cm and two more operations will be required to correct the angulation and malunion deformity of the bones of both the legs. He will also require constant medical supervision and physiotherapy. In the days of high cost of living and medical treatment, it is difficult to make a guess of the expenses likely to be incurred in two surgeries. Impugned judgment set aside. The appellant is entitled to a total compensation of Rs 6,00,000 with interest @ 6% per annum from the date of filing the claim petition till the date of payment payable within two months. (Paras 14 to 17). *M. Mani* v. *New India Assurance Co. Ltd.*, (2013) 11 SCC 444: (2014) 1 SCC (Civ) 577.

Bench Strength 2. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 2-1-2012]

R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551: 1995 SCC (Cri) 250; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161, followed

Halsbury's Laws of England, 4th Edn., Vol. 12 (p. 446), cited

[728] — S. 166 — Compensation — Multiplier — Appropriate multiplier — Claimant aged about 24 yrs — Following *Sarla Verma*, (2009) 6 SCC 121, held multiplier would be 18 for the purpose of calculating compensation (Para 11). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength 2. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167, followed

[729] — S. 166 — Compensation — Permanent disability — Amputation of right leg — Medical expenses — *Held, considering that appellant may be required to change his artificial leg from time to time Rs 1 lakh awarded for medical costs and incidental expenses including future medical costs* (Para 12). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength 2. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327, followed

[730] — **S. 166 — Compensation — Permanent disability — Estimation of functional disability or loss of earning capacity — Manual labour cases where loss of limb is often equivalent to loss of livelihood — Impact of permanent disability on earning capacity** — *Appellant claimant, vegetable vendor aged about 24 yrs sustaining injuries to lower end of right femur, left upper arm and his right leg had to be amputated — Held, occupation of vegetable vending is not confined to selling vegetables from a particular location but involves procuring vegetables from wholesale market or farmers and then selling it in retail market, often in cart which requires 100% mobility — Hence, his functional disability estimated at 85% (High Court determining disability at 65%) for determining loss of income — Workmen's Compensation Act, 1923, S. 4* (Paras 6 and 7). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

Mohan Soni v. Ram Avtar Tomar, (2012) 2 SCC 267: (2012) 1 SCC (Civ) 747: (2012) 1 SCC (Cri) 641; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161, followed

***Applied in** Basappa v. T. Ramesh, (2014) 10 SCC 789 at p. 797*

[731] — **S. 166 — Compensation — Permanent disability — Estimation of functional disability or loss of earning capacity — Occupation involving manual labour — Held, court should be sensitive in such cases** — *Appellant claimant vegetable vendor sustaining type-3 compound fracture of right femur, tibia, middle shaft tibia and fibula — Held, High Court erred in fixing his functional disability on lower side at 25% — Determining his functional disability at 35%, average monthly income at Rs 6500, increment on future income at 50% and applying multiplier of 18, claimant entitled to Rs 7,37,100 under head of "loss of future income", litigation costs at Rs 25,000, pain and suffering Rs 60,000, medical and incidental charges Rs 1,00,000, loss of amenities Rs 40,000, future medical expenses Rs 15,000, thus total compensation amounting to Rs 9,77,100 with interest @ 9% p.a.* (Paras 18 to 21). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

[732] — **S. 166 — Compensation — Permanent disability — Manual labour — Estimation of functional disability** — *Appellant claimant, cleaner of lorries by profession, aged about 22 yrs suffering from comminuted fracture (i.e. producing multiple bone splinters) in accident consequent to which he is unable to bend, stretch or rotate his right hand, nor able to lift heavy objects which was an essential feature of his livelihood — Hence, his functional disability assessed at 85% (High Court determining functional disability at 13%) — Based on Karnataka State Minimum Wages Rules, appellant entitled to Rs 4246 p.m. which rounded off to Rs 4300, and adding barter charges Rs 700, his monthly income determined as Rs 5000 — Applying multiplier of 18 and 50% increase in future loss of income appellant entitled to Rs 13,77,000 under head of "loss of future income", Rs 60,000 towards pain suffering, Rs 50,000 towards medical and incidental expenses, Rs 50,000 towards loss of amenities, Rs 5000 towards future expenses and Rs 25,000 towards litigation costs, in total compensation amounting to Rs 15,67,000 with 9% interest p.a.* (Paras 22 to 28). *Syed Sadiq* v. *United India Insurance Co. Ltd.*, (2014) 2 SCC 735: (2014) 4 SCC (Cri) 607: (2014) 2 SCC (Civ) 192: AIR 2014 SC 1052: (2014) 4 Mah LJ 538: (2014) 3 MPLJ 5: (2014) 118 Cut LT 29: (2014) 104 ALR 228: (2014) 137 AIC 149.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 16-1-2014]

[733] — **S. 166 — Rash and negligent driving — Contributory negligence — Mere involvement of vehicle in accident — Held, cannot fasten liability to pay compensation unless rash and negligent act of driver can be proved** — *On facts held, since bus was standing at red light and could stop within 100 to 150 yd of traffic signal on being asked, it cannot be said that bus started at high speed — Besides, PW 2 who was a reliable witness stating that despite no signal being given by bus driver to overtake the bus, deceased motorcyclist in effort to overtake bus had gone on its right side — Thus held, rash or negligent driving by driver R-2 not proved — No interference with impugned judgment setting aside award of Tribunal granting Rs 2,74,000 compensation along with interest @ 12% p.a. called for* (Paras 10 and 11). *Lachoo Ram* v. *Himachal RTC*, (2014) 13 SCC 254: (2014) 5 SCC (Cri) 638: (2014) 5 SCC (Civ) 703: (2014) 1 CTC 893: (2014) 104 ALR 225: (2014) 137 AIC 147.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh**, JJ. [Date of decision: 28-1-2014]

[734] — Ss. 166, 146, 147 and 149 — Claimant travelling in car belonging to insured but driven by claimant's son — Insurer if liable — Determination of — Insurer's liability or non-liability in such case, held, would depend upon the nature of the policy, viz., whether it is "Act policy" or "comprehensive/package policy" — *Hence, where insurance certificate alone was filed before Tribunal but not the policy, held, nature of the policy could not be discerned — Therefore, matter remitted to Tribunal for enabling the insurer to produce the policy — Liberty granted to parties to file additional documents and to lead further evidence — Liability or non-liability of insurer would depend on the nature of policy when the same is brought on record in a legal manner*

The claimant (Respondent 1 herein) was travelling in a car belonging to Respondent 3 and being driven by Respondent 2, who was son of the claimant. The car met with an accident in which the claimant lost both his eyes. The claimant filed an application under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal (the Tribunal) for compensation. Finding that the insurer had issued certificate of insurance in respect of the vehicle, the Tribunal held, the insurer liable to pay the compensation, and awarded compensation, albeit lesser than that had been claimed.

Partly allowing the Insurer's appeal, the High Court reduced the amount of compensation, and dismissed the claimant's appeal. Hence, the present batch of appeals by the Insurance Company as well as by the claimant. The claimant in his appeals sought enhancement of the compensation.

Before the Supreme Court, the insurer, in its appeal submitted that the policy was only an "Act policy" and, therefore, the liability of the insurer did not arise.

The claimant contended that whether the policy was an "Act policy" or a "comprehensive/package policy" or whether any extra premium was paid to cover the passenger, was not reflected from the certificate of insurance as the policy was not brought on record by tendering the same before the Tribunal.

Partly allowing the insurer's appeals, and dismissing the claimant's appeals,

Held :

In the present case, the policy was not brought on record. When certificate of insurance is filed but the policy is not brought on record it only conveys that the vehicle is insured. The nature of policy cannot be discerned from the same. Therefore, it would be appropriate to remit the matter to the Tribunal to enable the insurer to produce the policy and grant liberty to the parties to file additional documents and also lead further evidence as advised, and order is passed accordingly. (Paras 15 and 18)

Whether the insurer would be liable or not would depend upon the nature of the policy when it is brought on record in a manner as required by law. (Para 16). *Oriental Insurance Co. Ltd.* v. *Surendra Nath Loomba*, (2012) 13 SCC 792: (2012) 4 SCC (Cri) 413: (2014) 5 SCC (Civ) 430: AIR 2013 SC 483: (2013) 96 ALR 199: (2013) 1 Cal LJ 99: (2013) 121 AIC 89.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **Dipak Misra**, JJ. [Date of decision: 20-11-2012]

[735] — Ss. 166, 163-A and Sch. II — Appropriate multiplier — Determination of — Age of the deceased 26 years — *Tribunal applied the multiplier of 18 — Reduced by High Court to 16 — Held, as per Sch. II, for the age of the deceased above 25 years but not exceeding 30 years, the multiplier is 18 — Therefore, the appropriate multiplier should be 18 — Order of the Tribunal restored — Time-frame for payment of unpaid compensation suggested* (Paras 4 and 5). *Rajeshwari* v. *Oriental Insurance Co. Ltd.*, (2011) 15 SCC 224: (2012) 4 SCC (Cri) 577: (2014) 2 SCC (Civ) 359: AIR 2012 SC Supp 592.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 28-1-2011]

[**Ed.**: *See now also* three-Judge Bench ruling in *Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65 as to how appropriate multiplier is to be reckoned.]

[736] — Ss. 166, 163-A and Sch. II — Claim under S. 166 — Adjudication — Application of structured formula and multiplier given in Sch. II — Reiterated, is not binding (Para 28). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

[737] — Ss. 166, 163-A and Sch. II — Permanent disability — Functional disability/Loss of earning capacity — Disability certificate — Whether acceptable — *Held, it is not stated that under all circumstances, the Court has to blindly accept the disability certificate produced by claimant — Court has the discretion to accept either totally or partially or reject the certificate so produced and marked in the trial but, that, can be done only by assigning cogent and acceptable reasons* (Para 7).

D. Sampath v. *United India Insurance Co. Ltd.*, (2011) 15 SCC 160: (2014) 2 SCC (Civ) 353: AIR 2012 SC 544: (2011) 89 ALR 247: (2011) 106 AIC 10.

Bench Strength **2**. Coram: *G.S. Singhvi* and **H.L. Dattu**, JJ. [Date of decision: 13-9-2011]

[738] — Ss. 166, 163-A and Sch. II — Permanent disability — Functional disability/Loss of earning capacity — Estimation of — *On facts held, High Court, while assessing compensation payable to claimant, committed mistake in arriving at the loss of earning capacity — Though doctor has assessed 75% disability, High Court has taken into account 50% disability while calculating loss of income without any rhyme or reason* (Paras 5 and 7). *D. Sampath* v. *United India Insurance Co. Ltd.*, (2011) 15 SCC 160: (2014) 2 SCC (Civ) 353: AIR 2012 SC 544: (2011) 89 ALR 247: (2011) 106 AIC 10.

Bench Strength **2**. Coram: *G.S. Singhvi* and **H.L. Dattu**, JJ. [Date of decision: 13-9-2011]

[739] — Ss. 166, 163-A and Sch. II — Permanent disability — Loss of earning — Determination of — Guesswork — Extent to which permissible — *Held, it is no doubt true that, while making assessment, there is an element of guesswork, but that guesswork again must have reasonable nexus to the available material/evidence and the quantification made* (Para 6). *D. Sampath* v. *United India Insurance Co. Ltd.*, (2011) 15 SCC 160: (2014) 2 SCC (Civ) 353: AIR 2012 SC 544: (2011) 89 ALR 247: (2011) 106 AIC 10.

Bench Strength **2**. Coram: *G.S. Singhvi* and **H.L. Dattu**, JJ. [Date of decision: 13-9-2011]

[740] — Ss. 166 to 168, 163-A and Sch. II — Fatal accident resulting in death — Payment of damages/compensation — Concept of payment of "just compensation" in India — Different approach in English law where compensation/damages proportionate to loss suffered due to death are payable — *Observed, concept of culture and family life in India is totally distinct from culture and family life in England and other foreign countries — In India, just compensation is payable which is to be determined keeping in view Indian background, culture and socio-cultural circumstances existing in India — Motor Vehicles Act, 1939, S. 110-B — Fatal Accidents Act, 1855, S. 1-A — Words and Phrases — "Just compensation"*

Before the Fatal Accidents Act, 1855 came into force in India, there was no provision in Indian laws to maintain a claim for damages/compensation by the legal representative of the deceased for his death caused by tort/civil wrong or even by crime. The right to claim compensation died with the death of a person. The Fatal Accidents Act, 1855 was the first Indian legislation that provided a right to claim compensation for the death of a person caused by wrongful act of another. It was enacted in accordance with the English Fatal Accidents Act, 1846 and Indian Act followed the principles in the English Act with regard to payment of compensation. Thus, compensation/damages proportionate to the loss resulting from such death was payable. (Paras 9.1, 10 and 11)

The Motor Vehicles Act was enacted in 1939. Section 110-B of the 1939 Act provided for payment of amount of compensation by the Tribunal which appeared to it to be just. In 1988, the 1939 Act was repealed and the Motor Vehicles Act, 1988 came into force. By bringing in Section 168 of the Motor Vehicles Act, 1988 it was reiterated that the amount of compensation payable would be which appeared to be just. (Paras 13 and 14)

Thus, according to the English law compensation/damages were payable according to the proportionate loss whereas in India compensation which appears to the Claims Tribunal to be just is payable. The approach of the courts according to the English law and according to the Indian law have to be distinct and separate. The Indian law recognises just compensation whereas the English law required compensation proportionate to the loss suffered. English courts have been calculating loss of money as a bargain as to how much monetary loss has been caused to the claimant, as a result of the death of the bread earner/deceased. The English law being different, English Judges were having different approach towards the grant of compensation to the deceased's family. (Para 15)

Here in India, we have a different culture. Here, every parent thinks that it is his moral and legal duty to give fullest education to his children. Parents think that marriage of their children is their responsibility and even providing a house to their children and grandchildren is their responsibility. Here, in India, the concept of culture and family life is totally distinct from the culture and family life in England and in other foreign countries. Here, parents not only educate the children but spend huge amounts or at least sufficient amounts on the marriages of their children, on their education, for their housing needs and in a majority of cases in return, they are looked after in their old age. Most of the people work even after their retirement to support their children. The longevity of life in India has increased at least up to 69 years; in many cases, people live longer than that. The salaries and cost of

things increase rapidly. At a glance, between every 9-10 years they double. (Para 16)

Though the method of multiplier is one of the best methods in providing compensation, while choosing the multiplier the court/Tribunal has to take into consideration the rising inflation, increasing salaries and increasing cost of living. Therefore, "just compensation" is to be determined keeping in view the Indian background, the Indian culture, the Indian legal background, and the socio-cultural circumstances existing in India. (Para 17). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

[741] — Ss. 166 to 168, 163-A and Sch. II — Multiplier — Considerations while choosing the multiplier — *Held, court/Tribunal has to consider rising inflation, increasing salaries and increasing cost of living while choosing the appropriate multiplier*

Though the method of multiplier is one of the best methods in providing compensation, while choosing the multiplier the court/Tribunal has to take into consideration the rising inflation, increasing salaries and increasing cost of living. Therefore, "just compensation" is to be determined keeping in view the Indian background, the Indian culture, the Indian legal background, and the socio-cultural circumstances existing in India. (Para 17). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

[742] — Ss. 166 to 168, 171, 173 & Sch. II — Compensation — Appropriate multiplier — Held, multiplier of 8 allowed by Tribunal for deceased of 28 years too low — *Also considering, wife, two children and parents who died during the pendency of the case before the Tribunal, Multiplier of 13 using the unit method applied by High Court is still low — In view of* Sarla Verma case, *(2009) 6 SCC 121 appropriate multiplier is 17 — Compensation of Rs 5,30,400 granted with Rs 15,000 added under other permissible heads, as done by High Court — Time-bound payment deducting amount already paid in terms of the award and the judgment — Interest allowed at the rate of 6% per annum on the enhanced amount from the date of claim petition. Urmila* v. *Rashpal Kaur*, (2011) 15 SCC 291: (2014) 2 SCC (Civ) 458: (2011) 88 ALR 475: (2011) 105 AIC 62.

Bench Strength **2**. Coram: **G.S. Singhvi** and *H.L. Dattu*, JJ. [Date of decision: 9-8-2011]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, applied

[743] — Ss. 166 to 168 and 173 — Selection of multiplier — Split multiplier — Applicability — No routine application — *Held, in absence of any specific reason and evidence on record, Tribunal or court should not apply split multiplier in routine course — Multiplier should be applied as per decision of Supreme Court in* Sarla Verma case *as affirmed by the three-Judge Bench in* Reshma Kumari, *(2013) 9 SCC 65. Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191: (2013) 3 SCC (Cri) 826, applied

— Ss. 166 and 168 *See* 'Motor Vehicles Act, 1939', S. 110-A, (2013) 14 SCC 15: (2014) 2 SCC (Civ) 388

See also CIVIL PROCEDURE CODE, 1908, S. 25, (2011) 15 SCC 222: (2014) 2 SCC (Civ) 358

See also PRACTICE AND PROCEDURE — 'Pleadings/New Plea/Additional Plea/Alternative Plea', (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

[744] — Ss. 166 and 168 — Compensation — Appropriate multiplier — Determination of — Relevant factors — Deceased a child of 10 yrs — *Where age of the deceased boy was 10 yrs and taking the young age of the parents, namely, the mother who was about 36 yrs old, at the time of accident, multiplier of 15 can be applied to the multiplicand, by applying legal principles laid down in* Sarla Verma, *(2009) 6 SCC 121. Kishan Gopal* v. *Lala*, (2014) 1 SCC 244: (2014) 1 SCC (Cri) 241: (2014) 1 SCC (Civ) 184: (2013) 5 CTC 212: (2014) 3 Mah LJ 560: (2014) 2 MPLJ 569: (2013) 101 ALR 281: (2013) 131 AIC 219: (2013) 5 LW 205.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 26-8-2013]

Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, considered and relied on

[745] — Ss. 166 and 168 — Compensation — Computation of — Partial permanent disability of 60% — Medical expenditure — *Grievous fracture injuries caused to knee and also to left hand — Left leg amputated — In-patient for two months and presently walking with artificial limb — Appellant still requiring treatment and has to change his artificial limb as and when required — High Court not right in reducing compensation towards medical expenditure — Tribunal's award of Rs 5,00,000*

towards future medical expenses enhanced by another Rs 50,000 to Rs 5,50,000 and for other medical expenditure, including conveyance, attendant fee, etc. award of Rs 3,10,000 upheld — Total compensation of Rs 33,10,160 granted with interest @ 6% p.a. from date of filing petition before Tribunal till date of payment (Paras 14 to 18). *Dinesh Singh* v. *Bajaj Allianz General Insurance Co. Ltd.*, (2014) 9 SCC 241: (2014) 5 SCC (Cri) 26: (2014) 4 SCC (Civ) 797: (2014) 105 ALR 476: (2014) 139 AIC 55.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 23-4-2014]

Bajaj Allianz General Insurance Co. Ltd. v. Dinesh Singh, MFA No. 4502 of 2007, order dated 16-12-2008 (KAR), reversed

[746] — Ss. 166 and 168 — Compensation — Determination of — Permanent disability — Estimation of functional disability/loss of earning capacity — Claimant aged 34, a silk weaver met with accident, suffering disability — *Tribunal considered monthly income of claimant at Rs 1500 against Rs 4500 claimed and only 10% of disability as against 25-30% assessed by doctor — Doctor assessed severe weakness of right hand and leg — High Court enhanced amount of compensation considering disability at 25% and income as Rs 3500 as well as under other heads — Held, claimant being silk weaver needed to use his hands, so weakening of a hand would adversely affect his ability to perform his occupation — Disability assessed at 30% as against 25% assessed by High Court — Compensation enhanced* (Paras 6, 9 and 10). *C. Mohanraju* v. *United India Assurance Co. Ltd.*, (2011) 15 SCC 124: (2012) 4 SCC (Cri) 542: (2014) 2 SCC (Civ) 344: AIR 2011 SC 1897.

Bench Strength **2**. Coram: *G.S. Singhvi* and **A.K. Ganguly**, JJ. [Date of decision: 4-4-2011]

[747] — Ss. 166 and 168 — Compensation — Just compensation — Duty of Tribunal/court — Principles reiterated (Para 6). *Savita* v. *Bindar Singh*, (2014) 4 SCC 505: (2014) 2 SCC (Cri) 379: (2014) 2 SCC (Civ) 561: (2014) 3 CTC 427: (2014) 5 Mah LJ 95: (2014) 3 MPLJ 534: (2014) 104 ALR 730: (2014) 138 AIC 135.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-3-2014]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149, applied

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed

Savita v. Bindar Singh, AFO No. 96 of 2013, order dated 16-4-2013 (Utt), modified

[748] — Ss. 166 and 168 — Compensation — Just compensation — "Future treatment" and "pain and suffering" — Held, said two heads are different and cannot be clubbed together while computing compensation — *High Court erred in clubbing them together and quantifying compensation under these heads at Rs 50,000 — As far as "future treatment" is concerned, it depends on the facts of each case — In present case, it is definite that claimant would be required to undertake future treatment even to maintain his present state of health — Hence, Rs 3,00,000 as claimed granted under head of future treatment — As far as "pain, suffering and mental agony" is concerned, considering injuries sustained by claimant which had left him paralysed for life and evidence of PW 1 doctor to the effect that claimant was likely to suffer considerable pain throughout his life, claimant awarded Rs 3,00,000 acknowledging that monetary compensation for pain and suffering at best was palliative which had to be determined on a case-to-case basis* (Paras 19 to 21). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161; Sanjay Batham v. Munnalal Parihar, (2011) 10 SCC 665: (2012) 3 SCC (Civ) 1072: (2012) 1 SCC (Cri) 64, affirmed

[749] — Ss. 166 and 168 — Compensation — Quantum of — Notional income and future prospects — Notional income of Rs 3000 p.m. taken by Tribunal as claimants could not establish figure claimed by them, not disturbed — *Held, without disturbing notional income, in terms of* Sarla Verma, *(2009) 6 SCC 121, for deceased with fixed income at Rs 3000 and 30% increase for future prospects and after one third deduction for personal expenses the multiplicand would come to Rs 2600; and applying multiplier of 17, correctly applied by Tribunal, total amount of compensation would be Rs 5,30,400 — Adding (i) loss of consortium to spouse and loss of love, care and guidance to children and (ii) funeral expense amounts, order of High Court and Tribunal modified enhancing compensation to Rs 6,55,400 plus interest @ 8% p.a. from date of filing of claim petition till payment of compensation — Enhanced amount to be paid after deducting amount already paid, within four*

weeks (Paras 6 to 10). *Savita* v. *Bindar Singh*, (2014) 4 SCC 505: (2014) 2 SCC (Cri) 379: (2014) 2 SCC (Civ) 561: (2014) 3 CTC 427: (2014) 5 Mah LJ 95: (2014) 3 MPLJ 534: (2014) 104 ALR 730: (2014) 138 AIC 135.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-3-2014]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149, applied

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed

Savita v. Bindar Singh, AFO No. 96 of 2013, order dated 16-4-2013 (Utt), modified

[750] — Ss. 166 and 168 — Compensation — Quantum of — Whether compensation could be awarded only up to amount claimed by claimant *— Reiterated, there is no restriction that compensation could be awarded only up to amount claimed by claimant — In appropriate case, where from evidence brought on record, if Tribunal/court considers that claimant is entitled to get more compensation than claimed, Tribunal/court may pass such award — The only embargo is, it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from evidence — Words and Phrases — "Just compensation"* (Paras 19 and 20). *Sanobanu Nazirbhai Mirza* v. *Ahmedabad Municipal Transport Service*, (2013) 16 SCC 719: (2014) 6 SCC (Cri) 378: (2014) 5 SCC (Civ) 612: (2013) 101 ALR 721: (2013) 132 AIC 98.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 3-10-2013]

Nagappa v. Gurudayal Singh, (2003) 2 SCC 274: 2003 SCC (Cri) 523, followed

[751] — Ss. 166 and 168 — Compensation for loss of dependency — Deceased being sole earning member of family — Widowed mother (appellant claimant) only claiming compensation and two sisters not claiming compensation *— Annual income of deceased (21 yrs at time of accident) being Rs 5000 p.m. — Appellant held, entitled to 100% of income of deceased for calculation of compensation and by applying the multiplier of 15 (appellant mother being 41 yrs old at time of death of her son), Tribunal rightly arrived at the figure of Rs 9 lakhs for loss of dependency — Therefore, award of Tribunal totalling Rs 13.07 lakhs is restored — High Court holding that appellant being mother was entitled to only 50% of income of deceased for calculation of compensation for loss of dependency, set aside. Josphine James* v. *United India Insurance Co. Ltd.*, (2013) 16 SCC 711: (2014) 6 SCC (Cri) 372: (2014) 5 SCC (Civ) 605: (2013) 5 CTC 681: (2013) 100 ALR 730: (2013) 130 AIC 144.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 14-8-2013]

National Insurance Co. Ltd. v. Nicolletta Rohtagi, (2002) 7 SCC 456: 2002 SCC (Cri) 1788; Baby Radhika Gupta v. Oriental Insurance Co. Ltd., (2009) 17 SCC 627: (2011) 1 SCC (Cri) 1098; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, applied

United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509: (2012) 3 SCC (Civ) 798: (2012) 1 SCC (Cri) 328, impliedly relied on

United India Insurance Co. Ltd. v. Josphine James, MAC Appeal No. 433 of 2005, decided on 13-1-2012 (Del), reversed

United India Insurance Co. Ltd. v. Bhushan Sachdeva, (2002) 2 SCC 265: 2002 SCC (Cri) 320, impliedly, held, overruled

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, distinguished on facts

[752] — Ss. 166 and 168 — Death due to motor accident — Compensation — Deductions to be made from income of deceased towards personal and living expenses, for assessment of — Principles reiterated *— Claimants were parents of deceased, appellants herein — Deceased was a bachelor aged about 24 yrs and working in a private company, at the time of his accidental death — Admittedly, both parents (appellants) were held to be dependants to deceased, and therefore, Tribunal held that they had the right to get compensation — Tribunal as well as High Court made a deduction of 1/3rd only, towards personal and living expenses of deceased — But, deceased being a bachelor, and claimants being parents, deduction of 50% has to be made as personal and living expenses, as per decision in* Sarla Verma, *(2009) 6 SCC 121* (Paras 11 and 12). *M. Mansoor* v. *United India Insurance Co. Ltd.*, (2013) 15 SCC 603: (2014) 6 SCC (Cri) 587: (2014) 5 SCC (Civ) 377: (2013) 101 ALR 715: (2013) 132 AIC 65: (2014) 1 LW 184.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Chockalingam Nagappan**, JJ. [Date of decision: 3-10-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, applied

[753] — Ss. 166 and 168 — Death due to motor accident — Compensation — Selection of multiplier for deciding claim — Principles reiterated *— Deceased was a bachelor aged about 24 yrs and working in a private company, at the time of his accidental death — Claimants were parents of deceased, appellants herein — Tribunal adopted multiplier of 17 and High Court determined multiplier as 12 on basis of age of parents/claimants — Reiterated, selection of multiplier is based on age of*

deceased and not on basis of age of dependant — There may be a number of dependants of deceased whose age may be different and, therefore, age of dependants has no nexus with computation of compensation — Applying Sarla Verma, *(2009) 6 SCC 121, held, as age of deceased at the time of death was 24 yrs, multiplier of 18 ought to have been applied — Tribunal taking into consideration the age of deceased, wrongly applied multiplier of 17 and High Court committed a serious error by bringing it down to multiplier of 12* (Paras 13 and 14). *M. Mansoor* v. *United India Insurance Co. Ltd.*, (2013) 15 SCC 603: (2014) 6 SCC (Cri) 587: (2014) 5 SCC (Civ) 377: (2013) 101 ALR 715: (2013) 132 AIC 65: (2014) 1 LW 184.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Chockalingam Nagappan**, JJ. [Date of decision: 3-10-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, applied

Amrit Bhanu Shali v. National Insurance Co. Ltd., (2012) 11 SCC 738: (2013) 1 SCC (Civ) 592: (2013) 1 SCC (Cri) 1126, followed

[754] — Ss. 166 and 168 — Death due to motor accident — Determination of compensation — Appellant parents of their 24 yr old deceased son produced salary certificate of deceased, which shows that deceased was earning Rs 18,100 p.m. — Tribunal, hence, rightly took into consideration aforesaid income for computing compensation — *Annual income comes to Rs 2,17,200 — Applying relevant principles, if 50% of said income is deducted towards personal and living expenses of deceased* ***(see Shortnote A)****, contribution to the family will be Rs 1,08,600 — Applying multiplier of 18* ***(see Shortnote B)****, amount will come to Rs 19,54,800 — Besides this amount, claimants are entitled to get Rs 50,000 each towards loss of affection of son i.e. Rs 1,00,000 and Rs 10,000 on account of funeral and ritual expenses — Therefore, total amount comes to Rs 20,64,800 with interest @ 6% p.a. from date of filing of claim petition till realisation* (Paras 15 and 16). *M. Mansoor* v. *United India Insurance Co. Ltd.*, (2013) 15 SCC 603: (2014) 6 SCC (Cri) 587: (2014) 5 SCC (Civ) 377: (2013) 101 ALR 715: (2013) 132 AIC 65: (2014) 1 LW 184.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Chockalingam Nagappan**, JJ. [Date of decision: 3-10-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, applied

United India Insurance Co. Ltd. v. M. Mansoor, (2010) 1 TN MAC 593: 2012 ACJ 160, reversed

[755] — Ss. 166 and 168 — Death in accident — Compensation — Determination of income of deceased — *Held, on facts, no reason for High Court to have come to the conclusion that the deceased was getting only a sum of Rs 5000 p.m. — The compensation awarded by the Tribunal was just, proper and reasonable — Usual deduction of one-third was also made by the Tribunal in the carry home salary by the deceased — Tribunal had recorded a categorical finding that dependency of the appellants would be @ Rs 6800 p.m. which has been reduced to Rs 4000 by Division Bench of the High Court, without assigning any cogent and valid reasons — Tribunal was also justified in applying the multiplier of 14, looking to the age of the deceased* (Para 8). *Sharanamma* v. *North-East Karnataka RTC*, (2013) 11 SCC 517: (2014) 1 SCC (Civ) 603.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 19-1-2012]

[756] — Ss. 166 and 168 — Fatal accident — Compensation under heads of (i) loss of consortium to spouse and loss of love, care and guidance to children, and (ii) funeral expense amounts, held, should have been Rs 1,00,000 and Rs 25,000 respectively — Awarded accordingly (Para 7). *Savita* v. *Bindar Singh*, (2014) 4 SCC 505: (2014) 2 SCC (Cri) 379: (2014) 2 SCC (Civ) 561: (2014) 3 CTC 427: (2014) 5 Mah LJ 95: (2014) 3 MPLJ 534: (2014) 104 ALR 730: (2014) 138 AIC 135.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-3-2014]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149, applied

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed

Savita v. Bindar Singh, AFO No. 96 of 2013, order dated 16-4-2013 (Utt), modified

[757] — Ss. 166 and 168 — Fatal accident — Future prospects of deceased in case of self-employed persons or persons engaged on fixed wages like deceased driver herein

The Tribunal had considered monthly income of the deceased as Rs 3000 for the purpose of determining the multiplicand. The Tribunal ought to have considered the salary of the deceased as Rs 6000 by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs 5000 as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual salary of the deceased should have been considered as Rs 6000 per month for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the

appellate court. In view of the law laid down by the Supreme Court in *Santosh Devi case*, 30% should be added to the monthly income of the deceased towards future prospects of the deceased. If 30% is added to the monthly income, it would amount to Rs 7800 per month. From the said amount, 1/3rd should be deducted towards the personal expenses of the deceased, after which the remaining amount would come to Rs 5200 per month. When the same is multiplied by 12, it would amount to Rs 62,400 which would be the multiplicand. The said amount must be multiplied by multiplier of 16. As per the decision of the Supreme Court in *Sarla Verma case*, (2009) 6 SCC 121, the application of multiplier of 16 by the Tribunal considering the age of the deceased to be 35 years for computation of loss of dependency is correct. If the multiplier of 16 is applied to the multiplicand of Rs 62,400, it comes to Rs 9,98,400 which amount is awarded towards the loss of dependency to the appellants. Since the finding recorded by the Tribunal that there was 50% contributory negligence of both the drivers of the offending truck and the car is erroneous, the appellants are entitled to the full amount of Rs 9,98,400. (Paras 19 to 21). *Minu Rout* v. *Satya Pradyumna Mohapatra*, (2013) 10 SCC 695: (2014) 1 SCC (Cri) 384: (2014) 1 SCC (Civ) 108: (2013) 101 ALR 229: (2013) 130 AIC 17: (2014) 117 Cut LT 256: (2014) 2 MPLJ 129: (2014) 2 Mah LJ 534: AIR 2013 SC Supp 62.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 2-9-2013]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, followed

[**Ed.**: *Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167 has since been affirmed and extended by a three-Judge Bench in *Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54: (2013) 3 SCC (Cri) 817: (2013) 4 SCC (Civ) 179.]

[758] — Ss. 166 and 168 — Interest payable on award (for accident dt. 12-6-1998) — Interest of 6% awarded by High Court as well as Tribunal directed to be increased to 9% — This interest directed to be paid from date of application till date of payment by Insurance Company. *Josphine James* v. *United India Insurance Co. Ltd.*, (2013) 16 SCC 711: (2014) 6 SCC (Cri) 372: (2014) 5 SCC (Civ) 605: (2013) 5 CTC 681: (2013) 100 ALR 730: (2013) 130 AIC 144.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 14-8-2013]

MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, applied

— Ss. 166 and 168 — "Just compensation" — Equitable considerations when may prevail *See* CONSTITUTION OF INDIA, Arts. 142, 136 and 141, (2013) 10 SCC 673: (2014) 1 SCC (Civ) 86

[759] — Ss. 166 and 168 — Motor accident — Head-on collision between car and truck — Contributory negligence — Inference as to — Drawn by Claims Tribunal — Affirmed by High Court — Sustainability — *FIR as to accident registered against both drivers of truck and car — Due to death of driver of car, criminal case against him abated — Eyewitnesses deposing that occurrence took place due to rash and negligent driving of truck — Owner and driver of truck not contesting the case — No evidence adduced by Insurance Company to prove its plea that accident did not take place due to rash and negligent driving of truck — Non-production of FIR against the truck driver was inconsequential in present case — On such facts, finding recorded by Tribunal that there was contributory negligence on the part of deceased car driver, held, was erroneous — Hence, set aside*

Due to head-on collision between car of *S* and a truck, *S* sustained grievous injuries resulting in his death. The appellants (dependants of *S*) made claim for compensation before the Motor Accidents Claims Tribunal. The owner and the driver of the truck did not contest the claim proceedings. However, the Insurance Company opposed the claim and contended that the accident occurred not due to sole negligence of the driver of the truck but due to contributory negligence on the part of the deceased car driver *S*. The Tribunal recorded the finding that both the drivers of the car and the truck were equally responsible for the occurrence of the accident. Consequently, it held that the appellants were entitled to get compensation to the extent of 50% for the fault of the offending truck. The High Court affirmed the said judgment and award. Hence, the present appeal by the claimants.

Allowing the appeal,

Held :

There was head-on collision between the offending truck and the car. The police station concerned registered FIR against both the drivers of the offending vehicle and the car. During the claim proceedings, the eyewitnesses deposed that the occurrence of the accident was on account of rash and negligent driving of the truck. But the Tribunal observed that there was 50% contributory negli-

gence on the part of the deceased in causing the accident. The findings recorded by the Tribunal holding that there is contributory negligence on the part of the deceased driver, in the absence of legal evidence adduced by the Insurance Company to prove the plea taken by it that the accident did not take place on account of rash and negligent driving of the truck driver, is erroneous in law. The Tribunal has accepted the part of oral evidence of the eyewitnesses regarding the scene of accident and it has erroneously placed reliance upon the charge-sheet, which was filed against the driver of the offending truck and the deceased, to hold that there was contributory negligence on the part of the deceased by ignoring the fact that the criminal case against the deceased was abated. The Tribunal committed error in law in coming to the conclusion in the absence of rebuttal evidence that there was contributory negligence of 50% on the part of the deceased. The finding on the said issue recorded by the Tribunal and affirmed by the High Court, is erroneous for want of proper consideration of pleadings and legal evidence by both of them. (Paras 14 to 18). *Minu Rout* v. *Satya Pradyumna Mohapatra*, (2013) 10 SCC 695: (2014) 1 SCC (Cri) 384: (2014) 1 SCC (Civ) 108: (2013) 101 ALR 229: (2013) 130 AIC 17: (2014) 117 Cut LT 256: (2014) 2 MPLJ 129: (2014) 2 Mah LJ 534: AIR 2013 SC Supp 62.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 2-9-2013]

Minu Rout v. Satya Pradyumna, Motor Accident Appeal No. 594 of 2010, order dated 27-7-2011 (Ori), reversed

[760] — Ss. 166 and 168 — Motor accident claim — Non-production of FIR — When inconsequential — *CrPC, 1973, Ss. 154 and 173 — Penal Code, 1860, S. 279 r/w S. 302*

The Motor Accidents Claims Tribunal ought to have seen that non-production of FIR has no consequence for the reason that charge-sheet was filed against the driver of the offending truck for the offences punishable under Section 279 read with Section 302 IPC read with the provisions of the Motor Vehicles Act. (Para 17). *Minu Rout* v. *Satya Pradyumna Mohapatra*, (2013) 10 SCC 695: (2014) 1 SCC (Cri) 384: (2014) 1 SCC (Civ) 108: (2013) 101 ALR 229: (2013) 130 AIC 17: (2014) 117 Cut LT 256: (2014) 2 MPLJ 129: (2014) 2 Mah LJ 534: AIR 2013 SC Supp 62.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 2-9-2013]

[761] — Ss. 166 and 168 — Motor accident claims — Evidence and proof — Witnesses — *In motor road accidents claim cases, it is very difficult to get eyewitnesses — Even if available, they are not easily ready and willing to come and depose in court of law for many reasons — Thus, courts have to go by the oath of the claimant only* (Para 15). *Gurdeep Singh* v. *Bhim Singh*, (2013) 11 SCC 507: (2014) 1 SCC (Civ) 598.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 29-2-2012]

Gurdeep Singh v. Bhim Singh, FAO No. 3716 of 2001, order dated 24-12-2008 (P&H), reversed

[762] — Ss. 166 and 168 — Permanent disability — Extent of qua whole body/limb — Functional disability/Loss of earning capacity — Need for estimation of — *Reiterated, extent of disability of a limb expressed in percentage of total functions of that limb cannot be assumed to be disability percentage of whole body — Percentage of loss of earning capacity is different from percentage of permanent disability — Tribunals should assess effect of permanent disability on earning capacity in monetary terms — Workmen's Compensation Act, 1923, Ss. 3, 4 and Sch. I Pt. II & Sch. IV* (Paras 11 to 13)

The appellant got his right arm severed from his shoulder in an accident due to rash and negligent driving of bus in which he was travelling. Doctors certified 70 % permanent disability for injuries sustained in the accident. The Tribunal awarded a compensation of Rs 3,20,000 as against claim of Rs 12 lakhs. The High Court raised compensation amount to Rs 6,54,800 taking into account 50% increase in salary for future prospects, multiplier of 16 and loss of earning capacity to 70% in view of permanent disability based on salary of Rs 3000 per month plus Rs 50,000 on medical expenses, attendant's charges and pain and suffering totalling to Rs 7,04,800. In addition, the High Court awarded Rs 50,000 towards cost of prosthesis on the lesser side.

Before the Supreme Court challenge was on the ground that permanent disability at 70% is wrongly assessed which should have been 100% and damages awarded were on the lesser side.

Modifying the award and increasing the compensation,

Held :

The percentage of permanent disability has not been expressed by the doctors with reference to the full body or with reference to a particular limb. However, it is not in dispute that the claimant suffered such a permanent disability as a result of injuries that he is not in a position of doing the specialised job of designing, refrigeration and air-conditioning. For the said reason, the claimant's services were terminated by his employer but that does not mean that the claimant is not capable to do

any other job including the desk job. Having qualification of BSc degree and postgraduate diploma in Mechanical Engineering, he can perform any job where application of mind is required than any physical work. Hence, there is no grounds made out to interfere with the finding of the High Court which determined the percentage of loss of earning capacity to 70% adopting the percentage of loss of earning capacity as per the Workmen's Compensation Act. The total loss of income was thus rightly calculated by the High Court at Rs 6,04,800. (Paras 12 and 13). *Neerupam Mohan Mathur* v. *New India Assurance Co.*, (2013) 14 SCC 15: (2014) 2 SCC (Civ) 388: AIR 2013 SC 3378: (2013) 99 ALR 864: (2013) 128 AIC 133.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 1-7-2013]

[763] — Ss. 166 and 168 — Permanent disability caused to 8 yr old child — Compensation — Determination of — Under heads of pain and suffering and loss of amenities of life — *Appellant, an eight year old child doing third standard hit by Hero Puch motorcycle and suffered fractures of both bones of right leg with displacement and remained in-patient for 12 days — Doctor advised 16% permanent disability to whole body — Division Bench of High Court enhanced compensation from Rs 77,000 awarded by Tribunal to Rs 1,00,000 — Appellant had shortening of 1 cm of right lower limb as compared to opposite limb and continued to have painful limp, weakness of muscles of right limb, tenderness in joint line of right knee and terminal restrictions of joint movements of right knee and total restrictions of dorsiflexion of right ankle joint even after three years of the accident — Reiterated, for determination of compensation for non-pecuniary loss like pain and suffering and loss of amenities of life, special circumstances of claimant like age, unusual deprivation suffered, effect thereof on his future life should be considered — It is impossible to equate money with human sufferings or personal deprivations — Loss of amenities of life include loss of expectation of life — Long expectation of life is concerned with earning capacity — In these circumstances and considerations, compensation enhanced on account of pain and sufferings as well as loss of amenities to Rs 4 lakhs — Words and Phrases — "Amenities of life" and "loss of amenities of life"*

Allowing the appeal,

Held :

Even after about three years of the accident the appellant continued to have a painful limp, weakness of muscles of right limb, tenderness in the joint line of right knee and terminal restrictions of joint movements of right knee and total restrictions of dorsiflexion of right ankle joint. That apart, there was shortening of 1 cm of right lower limb as compared to opposite limb. In the assessment of the doctor, the appellant suffered a permanent disability of 16% to the whole body because of the injuries sustained in the accident. Considering the age at which the appellant suffered a dreadful accident in which the appellant suffered a severe injury in his right leg which has virtually created a deformity in the said leg, for the rest of his life the appellant has to suffer with the disability. The age of the appellant was, therefore, a very relevant factor while determining the compensation payable as the sufferance of such physical disaster, that too on his right leg cannot be measured in terms of money precisely but yet having regard to the present day living conditions and the extent to which the aspirations of the appellant came to be demolished by suffering a permanent disability for no fault of his, it becomes the responsibility of the respondent to adequately compensate whatever sufferings undergone by the appellant at that time and immediately after the accident as well as the mental agony that is being suffered by the appellant lifelong. (Paras 9 and 11 to 14). *Michael* v. *Oriental Insurance Co. Ltd.*, (2013) 14 SCC 774: (2014) 3 SCC (Civ) 533: (2013) 97 ALR 538: (2013) 124 AIC 129: (2013) 1 Cal LJ 197.

Bench Strength **2**. Coram: *G.S. Singhvi* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 11-2-2013]

Michael v. Amjad Pasha, MFA No. 7863 of 2004, decided on 15-9-2010 (KAR), modified

[764] — Ss. 166 and 168 — Witnesses — In motor accident claim cases, it is difficult to get witnesses, much less eyewitnesses — Extremely strict proof of facts in accordance with provisions of the Evidence Act may not be adhered to religiously — Some amount of flexibility has to be given to these cases, but it may not be construed that a complete go-by is to be given to the Evidence Act — *Evidence Act, 1872, S. 3* (Para 10). *Bimla Devi* v. *Satbir Singh*, (2013) 14 SCC 345: (2014) 2 SCC (Civ) 637.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 28-2-2012]

[765] — Ss. 166, 168 and Sch. II — Death of children in motor accidents between age group of 10 to 15 yrs — Compensation for non-earning members — *Amount fixed for notional income under Sch. II at Rs 15,000 in the year 1994, in respect of — Enhanced notional income than fixed in Sch. II, having regard to decreased value of*

rupee since 1994 — As deceased was 10 yrs old, assisting parents in their agricultural occupation, held, it is just and reasonable to take his notional income at Rs 30,000 p.a. — Principles in Lata Wadhwa, *(2001) 8 SCC 197, applied. Kishan Gopal* v. *Lala*, (2014) 1 SCC 244: (2014) 1 SCC (Cri) 241: (2014) 1 SCC (Civ) 184: (2013) 5 CTC 212: (2014) 3 Mah LJ 560: (2014) 2 MPLJ 569: (2013) 101 ALR 281: (2013) 131 AIC 219: (2013) 5 LW 205.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 26-8-2013]

Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, considered and relied on

Kishan Gopal v. Lala, Civil Misc. Appeal No. 1283 of 2000, decided on 15-3-2011 (Raj), overruled

[766] — Ss. 166, 168, 170(b), 171 and 173 — Compensation — Quantum — Death of 10 yrs old child travelling in trolley of the tractor — Parents claiming compensation — Tenability of claim — Quantum of compensation to be awarded — *Rejected by Tribunal, without appreciating oral and documentary evidence in its proper perspective erroneously, holding that death was not due to rash and negligent driving of the tractor by its driver — Further, High Court though has power to reappreciate the pleadings and evidence on record, declining to do so, mechanically endorsed findings of fact by Tribunal — Validity — Held, concurrent findings of fact are erroneous and invalid and therefore, call for interference — Deceased was 10 yrs old, who was assisting his parents in their agricultural occupation — Had he been alive would have certainly contributed substantially to the family by working hard — Principles in* Lata Wadhwa, *(2001) 8 SCC 197 applied — Multiplier of 15 and multiplicand of 30,000 p.a. adopted — Rs 50,000 awarded under conventional heads [in accordance with principles in* Susamma Thomas, *(1994) 2 SCC 176 in relation to death of children between 10 to 15 yrs old] — Total compensation of Rs 5,00,000 with interest @ 9% p.a., awarded. Kishan Gopal* v. *Lala*, (2014) 1 SCC 244: (2014) 1 SCC (Cri) 241: (2014) 1 SCC (Civ) 184: (2013) 5 CTC 212: (2014) 3 Mah LJ 560: (2014) 2 MPLJ 569: (2013) 101 ALR 281: (2013) 131 AIC 219: (2013) 5 LW 205.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 26-8-2013]

Lata Wadhwa v. State of Bihar, (2001) 8 SCC 197, considered and relied on

Kishan Gopal v. Lala, Civil Misc. Appeal No. 1283 of 2000, decided on 15-3-2011 (Raj), overruled

[767] — Ss. 166, 168 and 171 — Compensation — Just compensation — Computation of — 100% permanent disability — *Claimant aged 25 yrs, having wife and 1½ yrs old child, earning Rs 41,300 annually suffering 100% disability in motor accident which leaving him paralysed for life and he likely to suffer considerable pain throughout his life — Claimant granted Rs 10,53,150 towards "loss of income" including future prospects of increase of income, Rs 1,38,552 for "medical expenses", Rs 3,00,000 for "future treatment", Rs 3,00,000 for "pain and suffering and mental agony", Rs 2,00,000 for cost of attendant, thus amounting to Rs 19,91,702 (High Court granting Rs 8,08,052) with 6% interest from date of application till date of payment of enhanced compensation* (Paras 23 and 24). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

Sanjay Verma v. Haryana Roadways, 2008 ACJ 151 (Utt), modified

[768] — Ss. 166, 168 and 171 — Compensation — Just compensation — Permanent disability — Heads under which compensation to be awarded — Loss of income, future prospects of income, pain and suffering, loss of amenities, loss of marriage prospects, cost of medical care/prosthetics, attendant/assistant, and cost of litigation — *Victim, a brilliant student holding first rank in school, aged about 16 yrs suffering 70% permanent disability in motor accident consequent to which appellant claimant unable to walk without crutches and suffering severe pain while walking — Held, considering that appellant was a brilliant student having good career prospects, notional monthly income of Rs 6000 determined by High Court was too meagre — Rs 10,000 fixed as her monthly notional income for computation of just and reasonable compensation under head of loss of income — Considering her loss of future prospects, claimant entitled to 50% increase under this head — Compensation of Rs 1,00,000 as awarded by Tribunal and upheld by High Court under head pain and suffering enhanced to Rs 2,00,000 since doctor had stated that at the time of walking with support of crutches, appellant would be suffering pain permanently — Similarly, Rs 1,00,000 for loss of amenity and attendant charges awarded by courts below found too meagre and same enhanced to Rs 2,00,000 since appellant had permanently lost her amenity of both legs — Amount of Rs 2,00,000 awarded under head of "loss of enjoyment of life*

and marriage prospects" totally inadequate since her marriage prospects had substantially reduced and on account of permanent disablement she would be deprived of enjoyment of life and the same enhanced to Rs 3,00,000 — Further, the accident had taken place on 11-4-2005 and the appellant claimant, since then has been fighting for justice — Hence, she is entitled to Rs 25,000 under the head of "cost of litigation" — Thus, appellant-claimant entitled to a total amount of Rs 30,93,000 as compensation with interest @ 9% p.a. from date of filing of claim petition. V. Mekala v. *M. Malathi*, (2014) 11 SCC 178: (2014) 3 SCC (Cri) 333: (2014) 4 SCC (Civ) 18: (2014) 105 ALR 246: (2014) 139 AIC 200.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 25-4-2014]

R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551: 1995 SCC (Cri) 250; Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683: (2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82: (2012) 1 SCC (L&S) 422; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161; Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422: (2009) 5 SCC (Civ) 143: (2010) 1 SCC (Cri) 1044; Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, followed

K. Narasimha Murthy v. Oriental Insurance Co. Ltd., ILR 2004 KAR 2471, approved

Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327, applied

V. Mekala v. M. Malathi, Civil Misc. Appeal No. 2131 of 2008, decided on 31-8-2012 (Mad), reversed

[769] — Ss. 166, 168 and 171 — Death in motor accident — Compensation for — Computation of — Victim, aged 19 yrs, a student of Engineering — Compensation of Rs 1,92,000 awarded by Claims Tribunal, enhanced to Rs 2,00,000 by High Court — Further enhancement of compensation by Supreme Court — Entitlement to — *Claims Tribunal, after considering probable income of deceased as Rs 15,000 p.a. and deducting one-third therefrom towards personal expenses of deceased and then applying multiplier of 17, determining total dependency amount as Rs 1,70,000 — Tribunal further granting claimants i.e. mother and father of victim Rs 10,000 each towards loss of love and affection of deceased and Rs 2000 towards funeral expenses — Thus, Tribunal awarding a total compensation of Rs 1,92,000, which was enhanced in appeal to Rs 2,00,000 — Applying the yardstick as contained in judgment of* Arvind Kumar Mishra, *(2010) 10 SCC 254, and having regard to age of parents of deceased i.e. 45 and 42 respectively, held, award of a lump sum compensation of Rs 7,00,000 to parents of deceased would serve the ends of justice — Compensation enhanced accordingly — Directed to be paid along with interest @ 6% p.a. from the date of filing of claim petition — CPC, 1908, S. 34 — Interest Act, 1978, Ss. 3 and 4* (Paras 16 to 18). *Radhakrishna* v. *Gokul*, (2013) 16 SCC 585: (2014) 6 SCC (Cri) 328: (2014) 5 SCC (Civ) 559: (2013) 101 ALR 735: (2013) 132 AIC 118.

Bench Strength **2**. Coram: **G.S. Singhvi** and *Gyan Sudha Misra*, JJ. [Date of decision: 31-10-2013]

Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254: (2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258, followed

Radhakrishna v. Gokul, Misc. Appeal No. 1760 of 2004, order dated 27-6-2007 (MP), modified

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, explained and relied on

[770] — Ss. 166, 168 and 171 — Interest — Award of — Where Insurance Company contesting claim of appellants without settling their legitimate claim for about 21 yrs, interest @ 9% p.a. awarded — *Held, if the Insurance Company had awarded and paid just and reasonable compensation to the appellants the same could have been either invested or kept in the fixed deposit, then the amount could have earned five times more than what is awarded today in this appeal. Kishan Gopal* v. *Lala*, (2014) 1 SCC 244: (2014) 1 SCC (Cri) 241: (2014) 1 SCC (Civ) 184: (2013) 5 CTC 212: (2014) 3 Mah LJ 560: (2014) 2 MPLJ 569: (2013) 101 ALR 281: (2013) 131 AIC 219: (2013) 5 LW 205.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 26-8-2013]

[771] — Ss. 166, 168 and 171 — Motor accident — Compensation claim — Just and reasonable compensation — Determination — Deceased, aged 35 years, working as a driver — Claimed to be earning Rs 5000 per month, though no documentary evidence adduced in respect thereof — Deceased died leaving behind his wife, his mother and two minor children — *In view of skilled job of deceased, held, actual salary of deceased should have been considered as Rs 6000 per month to award just and reasonable compensation — Having regard to future prospects of deceased, applying* Santosh Devi, *(2012) 6 SCC 421, monthly income of deceased enhanced by 30% for computing compensation — Out of said amount (i.e. Rs 6000 + 30% of Rs 6000 — Rs 7800), 1/3rd amount deducted towards personal expenses of deceased — Multiplying remaining amount (i.e. Rs 7800 — 1/3rd of Rs 7800 — Rs 5200) by 12, multiplicand computed as Rs 62,400 — Taking into account age of deceased (35 yrs), applying multi-*

plier of 16 in view of decision in Sarla Verma, *(2009) 6 SCC 121, loss of dependency computed as Rs 62,400 x 16 — Rs 9,98,400 — Following* Susamma Thomas, *(1994) 2 SCC 176, Rs 50,000 further added to said amount towards loss of love and affection suffered by surviving child and wife of deceased and expenses incurred in funeral and sudhi ceremonies of deceased — Thus, a total compensation of Rs 9,98,400 + Rs 50,000 — Rs 10,48,400 awarded to appellant claimants with interest @ 9% per annum from the date of filing of petition till the date of payment — CPC, 1908, S. 34*

On account of head-on collision between car of *S* and a truck, *S* sustained grievous injuries resulting in his death. The Claims Tribunal quantified the compensation accepting the age of *S* as 35 years and applied the multiplier of 16 to the multiplicand to quantify the loss of dependency by taking the monthly salary of *S* as Rs 3000. Out of the said amount, 1/3rd was deducted towards personal expenses of *S*. Thereafter, from the said amount calculated as Rs 3,84,000, the Tribunal deducted 50% towards the alleged contributory negligence on the part of *S*. Thus, it awarded Rs 1,92,000 towards the loss of dependency. To the said amount, Rs 5000 and Rs 3000 were added towards funeral expenses and loss of estate, love and affection respectively. Thus, in total, a compensation of Rs 2,00,000 with interest at the rate of 6% per annum from the date of filing of the claim petition till the date of actual payment was awarded to the appellants (dependants of *S*). The High Court affirmed the judgment and award passed by the Tribunal. Hence, the present appeal by the claimants.

Allowing the appeal and enhancing the compensation,

Held :

The deceased was working as a driver of the car. The appellants were all dependent upon the earnings of the deceased. It is stated in the claim petition and in the evidence of PW 1 (wife of the deceased) that the deceased was earning Rs 5000 per month. The oral evidence of PW 1 is not accepted by the Tribunal, solely for the reason that the appellant claimants did not produce documentary evidence to prove the monthly salary of the deceased as Rs 5000 per month as claimed by them. (Para 19)

However, the Tribunal had considered monthly income of the deceased as Rs 3000 for the purpose of determining the multiplicand. The Tribunal ought to have considered the salary of the deceased as Rs 6000 by taking judicial notice of the fact that the post of a driver is a skilled job. Though the claim of the appellants is Rs 5000 as monthly salary of the deceased for the purpose of determining the loss of dependency, the actual salary of the deceased should have been considered as Rs 6000 per month for awarding just and reasonable compensation, which is the statutory duty of the Tribunal and the appellate court. In view of the law laid down by the Supreme Court in *Santosh Devi case*, 30% should be added to the monthly income of the deceased towards future prospects of the deceased. If 30% is added to the monthly income, it would amount to Rs 7800 per month. From the said amount, 1/3rd should be deducted towards the personal expenses of the deceased, after which the remaining amount would come to Rs 5200 per month. When the same is multiplied by 12, it would amount to Rs 62,400 which would be the multiplicand. The said amount must be multiplied by multiplier of 16. As per the decision of the Supreme Court in *Sarla Verma case*, (2009) 6 SCC 121, the application of multiplier of 16 by the Tribunal considering the age of the deceased to be 35 years for computation of loss of dependency is correct. If the multiplier of 16 is applied to the multiplicand of Rs 62,400, it comes to Rs 9,98,400 which amount is awarded towards the loss of dependency to the appellants. Since the finding recorded by the Tribunal that there was 50% contributory negligence of both the drivers of the offending truck and the car is erroneous, the appellants are entitled to the full amount of Rs 9,98,400. (Paras 19 to 21)

That apart, having regard to loss of love and affection suffered by the surviving child and the wife of the deceased as well as the expenses incurred for the funeral and sudhi ceremonies of the deceased, applying the decision of the Supreme Court in *Susamma Thomas case*, a further sum of Rs 50,000 is awarded under the said conventional heads which is just and reasonable. If Rs 50,000 is added to the compensation awarded for the loss of dependency, the total compensation comes to Rs 10,48,400. The Insurance Company is liable to pay that compensation as the offending vehicle is insured with it. On the said amount, in view of the decision of the Supreme Court in *Uphaar Tragedy Victims Assn.*, (2011) 14 SCC 481, the Insurance Company is also liable to pay interest at the rate of 9% per annum from the date of filing of the claim petition till the date of payment. (Paras 22 and 23).

Minu Rout v. *Satya Pradyumna Mohapatra*, (2013) 10 SCC 695: (2014) 1 SCC (Cri) 384: (2014) 1 SCC (Civ) 108: (2013) 101 ALR 229: (2013) 130 AIC 17: (2014) 117 Cut LT 256: (2014) 2 MPLJ 129: (2014) 2 Mah LJ 534: AIR 2013 SC Supp 62.

Bench Strength 2. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 2-9-2013]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176: 1994 SCC (Cri) 335; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, followed

[**Ed.**: *Santosh Devi* v. *National Insurance Co. Ltd.*, (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167 has since been affirmed and extended by a three-Judge Bench in *Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54: (2013) 3 SCC (Cri) 817: (2013) 4 SCC (Civ) 179.]

[772] — Ss. 166, 168, 171 and 173 — Compensation — Just compensation — Son of appellants severely injured with 80% permanent disability — *Tracheotomy and other surgeries performed and said son practically becoming bedridden, and could be moved only in a wheelchair requiring continuous nursing, and was unable to perform his day-to-day activities — No chance of any improvement — Tribunal awarding Rs 18,75,800 with interest @ 7.5% — Award of Tribunal restored on grounds of equity — Amount of compensation awarded by Tribunal along with interest @ 7.5% from date of presentation of claim petition till realisation to be paid to appellants* (Paras 10 to 13)

The appellants in fact proved that they had spent Rs 3,49,128 towards medical expenses for treating their son. They had to purchase certain instruments worth Rs 58,642 for making life of their son comfortable and Rs 31,000 towards nursing and Rs 1,37,000 for Physiotherapist. *R* will have to remain dependent for his whole life on someone and his life is very miserable and substantial financial burden on appellants for entire life of their injured son. (Para 10). *R. Venkata Ramana* v. *United India Insurance Co. Ltd.*, (2013) 10 SCC 673: (2014) 2 SCC (L&S) 717: (2014) 1 SCC (Cri) 374: (2014) 1 SCC (Civ) 86: (2013) 132 AIC 90: (2014) 1 MPLJ 507: (2014) 2 Mah LJ 454: (2013) 101 ALR 727.

Bench Strength **2**. Coram: **Anil R. Dave** and *Dipak Misra*, JJ. [Date of decision: 17-9-2013]

United India Insurance Co. Ltd. v. R. Venkata Ramana, MACMA No. 1016 of 2007, decided on 27-12-2010 (AP), reversed

[773] — Ss. 166, 168, 171 and 173 — Motor accident — Quantum of compensation — Determination — Functional disability/Loss of earning capacity — Estimation of — Reiterated, functional disability of an accident victim requires determination on the basis of nature of disability in the light of the career or profession which he or she was pursuing in life — It should not be computed mechanically based only on percentage of physical disability — *Victim, a young advocate aged about 36 yrs, sustaining whole body disability of 50% — Compensation of Rs 8,87,300 awarded by Claims Tribunal — Reduction of, by High Court to Rs 4,67,500 (by reducing loss of future income due to disability from Rs 6,17,500 to Rs 1,50,000) — Propriety — Appellant victim due to accident suffering partial sensory loss all over his limbs and lacking proper coordination in all four limbs — He requiring an assistant for daily routine work — Considering medical assessment of appellant's condition after accident and in view of his whole body disability of 50%, held, it would be very difficult for appellant to practise as an advocate and compete with others in the field of legal profession — Appellant being a young advocate was bound to suffer huge professional loss on account of his said condition due to injuries sustained by him in accident — Hence, reduction of appellant's loss of income due to disability from Rs 6,17,500 to Rs 1,50,000 by High Court, held, was not proper — Further held, in order to do complete justice in the matter, victim's loss of earning i.e. functional disability should be treated as 70% and appropriate multiplier should be 16 in place of 13 — Thus, enhancing appellant's loss of income due to disability from Rs 6,17,500 to Rs 10,17,500, total compensation payable to appellant enhanced to Rs 12,87,300 — Directed to be paid with interest @ 6% p.a. from the date of filing of claim petition till the date of payment together with costs quantified at Rs 15,000* (Paras 11 to 13)

Allowing the appeals (with costs) and enhancing the compensation, the Supreme Court held as above. *N. Manjegowda* v. *United India Insurance Co. Ltd.*, (2014) 3 SCC 584: (2014) 4 SCC (Cri) 634: (2014) 2 SCC (Civ) 297: (2014) 4 Mah LJ 37: (2014) 2 MPLJ 705: (2013) 101 ALR 697: (2013) 132 AIC 1.

Bench Strength **3**. Coram: *G.S. Singhvi*, **Shiva Kirti Singh** and *Chockalingam Nagappan*, JJ. [Date of decision: 12-11-2013]

Yadava Kumar v. National Insurance Co. Ltd., (2010) 10 SCC 341: (2010) 4 SCC (Civ) 168: (2010) 3 SCC (Cri) 1285; Rekha Jain v. National Insurance Co. Ltd., (2013) 8 SCC 389: (2013) 4 SCC (Cri) 297: (2013) 3 SCC (Civ) 758, affirmed

N. Manjegowda v. C.P. Basavanagowda Parappanavar, MFA No. 2386 of 2007, order dated 6-9-2012 (KAR), reversed

— Ss. 166, 168 and 173 *See also* CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP — Questions of Fact, Art. 136, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73

[774] — Ss. 166, 168 and 173 — Award of separate compensation for loss of earnings/earning capacity and permanent disability — Held, permissible and proper — *When appellant claimant*

was alighting from bus of respondent, conductor did not notice him alighting and blew whistle and bus started to move — At that moment appellant claimant fell down and rear wheel of bus crushed his right leg — Consequently his right leg below knee was amputated — Considering that appellant claimant was of 45 yrs, MACT adopted multiplier of 13 and treated 85% as extent of disability to award compensation of Rs 9,42,822 for both loss of earnings/earning capacity and permanent disability — In appeal, High Court reduced compensation to 6,72,822 by adopting multiplier of 10 and observed that compensation cannot be awarded under both heads — Unsustainability of — Held, compensation can be awarded under both heads for loss of earnings/earning capacity and permanent disability — Courts and Tribunals must award just compensation — Appellant claimant was treated as an in-patient in hospital between 27-1-1997 to 26-2-1997 — He lost his earnings between 28-1-1997 to 31-12-1998 due to severe injuries and amputation of leg below knee — He was proprietor of a firm and 15 persons were working under him — Therefore MACT was justified in computing award in the manner that it did — High Court erred in reducing multiplier and holding that compensation could not have been awarded on both heads — Hence, compensation re-computed by Supreme Court as per methodology adopted by MACT, and interest awarded @ 9% from date of petition till payment (Paras 16 to 20). *S. Manickam* v. *Metropolitan Transport Corpn. Ltd.*, (2013) 12 SCC 603: (2014) 2 SCC (L&S) 588: (2014) 4 SCC (Cri) 435: (2014) 1 SCC (Civ) 727: AIR 2013 SC 2629: (2013) 3 KLT 248: (2013) 100 ALR 1: (2013) 128 AIC 69: (2014) 117 Cut LT 88: (2013) 5 LW 576.

Bench Strength **2**. Coram: **P. Sathasivam** and *M.Y. Eqbal*, JJ. [Date of decision: 1-7-2013]

Ramesh Chandra v. Randhir Singh, (1990) 3 SCC 723: 1990 SCC (Cri) 512; B. Kothandapani v. T.N. State Transport Corpn. Ltd., (2011) 6 SCC 420: (2011) 3 SCC (Civ) 343: (2011) 2 SCC (Cri) 1002; K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274: (2013) 2 SCC (Civ) 279, followed

United India Insurance Co. Ltd. v. Veluchamy, (2005) 1 CTC 38, approved

Cholan Roadways Corpn. Ltd. v. Ahmed Thambi, (2006) 4 CTC 433, held, disapproved

[775] — Ss. 166, 168 and 173 — Compensation — Determination of — Future prospects of income enhancement of deceased — Addition to actual income of deceased at time of death, for computation of compensation — *Sarla Verma*, (2009) 6 SCC 121, applied — Death of government servant — Stability in service, enhancement of salary and promotional benefits — Consideration of — *As MACT awarded compensation without taking into account salary and promotional benefits of deceased and High Court reduced compensation ignoring this aspect, held, MACT and High Court ought to have considered service benefits of deceased while calculating her income — Hence, award passed by High Court set aside and award passed by MACT restored*

The deceased was a renowned doctor serving as lecturer in Homeopathic College and also carried on private practice. The deceased died on the spot due to rash and negligent driving of offending vehicle when she was driving her car. The appellant-claimant is the daughter of the deceased. The appellant-claimant along with her father filed claim petitions before MACT contending that her mother's income was Rs 12,000 per month. Based on that, she claimed Rs 27,00,000 before MACT as compensation. After considering the evidence on record, MACT awarded compensation of Rs 10,62,000 with 6% interest thereon. In appeal, the High Court reduced it to Rs 8,00,000. Further, the High Court directed that 60% of equivalent amount be deposited in any Nationalised Bank for period of five years. Hence this appeal.

Allowing the appeal,

Held :

It should have been taken into consideration that the deceased was in public employment. Therefore, it was a stable employment for a period of another seven years and there could have been revision of wages and promotional benefits accrued in her favour if she was alive. Therefore, for determining the annual income of the deceased, the principles laid down in *Sarla Verma*, (2009) 6 SCC 121 should have been applied to the case of the appellant-claimants by taking into consideration the monthly salary of the deceased at Rs 12,000 to which 30% should have been added as future prospects of income as mentioned above and that much amount could have been taken as monthly income of the deceased for the purpose of determining the compensation towards the loss of dependency of the appellant-claimants. (Para 15)

[Ed.: *See also* now the three-Judge Bench decisions in *Rajesh* v. *Rajbir Singh*, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179 and *Reshma Kumari* v. *Madan Mohan*, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191.]

This aspect of the matter was not taken into consideration by the Tribunal while awarding compensation. Nonetheless, it has accepted the claim made by the appellant-claimants that the salary of the deceased was Rs 12,000 per month and the multiplier 11 was applied and awarded compen-

sation of Rs 10,62,000. The same was erroneously interfered with by the High Court in the appeal filed by the respondent-insurer though it had no right to challenge the quantum of compensation as it had available to it only the limited defences as provided under Section 149(2) of the Motor Vehicles Act, 1988 in the absence of permission from the Tribunal to avail of other defences as required under Section 170(*b*) of the Act. (Paras 16 to 19)

Thus, the award of compensation of Rs 10,62,000 awarded by the Tribunal is restored with interest at 6% per annum, payable from date of filing of claim petition till date of payment. (Para 19). *Rekha Jain* v. *National Insurance Co. Ltd.*, (2013) 12 SCC 202: (2014) 2 SCC (L&S) 562: (2013) 4 SCC (Cri) 122: (2014) 1 SCC (Civ) 300: AIR 2013 SC 3458: (2013) 100 ALR 254: (2013) 129 AIC 206: (2013) 4 LW 334.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 1-8-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Cri) 1002, para 24; National Insurance Co. Ltd. v. Nicolletta Rohtagi, (2002) 7 SCC 456: 2002 SCC (Cri) 1788, applied

National Insurance Co. Ltd. v. Rekha Jain, MACA No. 579 of 2007, order dated 24-2-2011 (Ori), reversed

[776] — Ss. 166, 168 and 173 — Compensation — Determination of — Pecuniary damages and Non-pecuniary damages — Heads under which such damages can be awarded — Reiterated

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (special damages)

(*i*) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure. (Para 12.1)

(*ii*) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(*a*) Loss of earning during the period of treatment;

(*b*) Loss of future earnings on account of permanent disability. (Para 12.2)

(*iii*) Future medical expenses. (Para 12.3)

Non-pecuniary damages (general damages)

(*iv*) Damages for pain, suffering and trauma as a consequence of the injuries. (Para 12.4)

(*v*) Loss of amenities (and/or loss of prospects of marriage). (Paras 12.5 and 12.8)

(*vi*) Loss of expectation of life (shortening of normal longevity). (Para 12.6)

In routine personal injury cases, compensation will be awarded only under Heads (*i*), (*ii*)(*a*) and (*iv*). It is only in cases of serious injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the Heads (*ii*)(*b*), (*iii*), (*v*) and (*vi*) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. (Paras 12.7 and 12.8). *G. Ravindranath* v. *E. Srinivas*, (2013) 12 SCC 455: (2014) 1 SCC (Cri) 704: (2014) 1 SCC (Civ) 688: AIR 2013 SC 2974: (2013) 100 ALR 721: (2013) 130 AIC 224.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 1-7-2013]

[777] — Ss. 166, 168 and 173 — Compensation — Hypertechnicality, not to be allowed to frustrate beneficial legislation — Matter remitted back to be decided afresh/de novo — *Deceased was travelling in a three-wheeler accompanied by co-passenger S and J — Accident occurred on account of rash and negligent driving of three-wheeler by its driver — Deceased had sustained grievous injuries and later succumbed to the same — Claim petition came to be dismissed as on the scanty evidence produced by claimants factum of death of deceased in accident could not be established — FIR was lodged next day by S co-passenger injured in same accident — For the reasons beyond control of claimants, they were not able to produce evidence of co-passengers S and J — Appellants filed affidavit of J and statement of S under S. 161 CrPC — Several documents brought to Supreme Court's notice for the first time and could not be placed before Tribunal — Claim case had not been contested in a proper and legal manner on account of several mistakes committed by appellants, but that should not be sufficient to throw the claim petition, so as to deny claimants of their just compensation — Motor Vehicles Act is a social piece of legislation and has been enacted with intent and object to facilitate claimants/victims to get redress for loss of losing of a family member or for injuries, at an early date — It is desirable to adopt a more realistic, pragmatic and liberal approach in these matters — Held, one more opportunity should be given to appellants so that they may be able to prove factum of accident — Matter remitted to Tribunal, to afford an opportunity to both parties to lead evidence and to prove the factum of accident, age and nature of work that was being conducted or carried on by deceased, then to work out the amount of compensation at an earliest* (Paras 5 to 9 and 11 to 14). *Bimla Devi* v. *Satbir Singh*, (2013) 14 SCC 345: (2014) 2 SCC (Civ) 637.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 28-2-2012]

Bimla v. Satbir Singh, First Appeal Order No. 1543 of 2008, order dated 24-3-2009 (P&H), reversed

[778] — Ss. 166, 168 and 173 — Compensation — Income — Absence of proof by way of documentary evidence — Calculation of income — *Reiterated, if income asserted by claimant is not exorbitant by any standard and reflective of ground realities, such claim may be accepted in absence of any documentary evidence* (Para 9). *Sanjay Kumar* v. *Ashok Kumar*, (2014) 5 SCC 330: (2014) 2 SCC (Cri) 550: (2014) 3 SCC (Civ) 181: (2014) 104 ALR 236: (2014) 137 AIC 134.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 24-1-2014]

Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236: (2012) 3 SCC (Civ) 452: (2012) 1 SCC (Cri) 825, followed

[779] — Ss. 166, 168 and 173 — Compensation — Injuries suffered in a motor road accident — Accident and involvement of vehicle proved — Technical defects in pleading and proof — Effect of — *Appellant, was travelling in a bus belonging to R-4 driven by R-5 — Driver was travelling, was driving the bus at high speed, in a rash and negligent manner — Driver of Haryana Roadways bus going ahead applied brakes to save some animal — There was a collision between the two buses — Appellant who suffered multiple grievous injuries filed claim petition, for Rs 5 lakhs for pain, sufferings, treatment, loss of earning capacity — Tribunal declined relief as appellant was not able to prove that he was travelling in the bus — Appellant in claim petition mentioned bus No. DL 1 P 1521, but this was not correct — Accident actually occurred with bus No. DL 1 P 1529 of Haryana Roadways — Only on account of technicalities, his claim petition was defeated — Bus bearing Registration No. DL 1 P 1529 was not insured, no liability could be fastened on Insurance Company — Held, it was established and crystal clear that appellant had definitely met with accident — He was also travelling in bus operated by R-4 — It was also proved that accident was between two buses at the said time — Reasonable and just compensation with interest @ 6% p.a. awarded from date of accident till its actual payment, to appellant with cost of litigation payable by owner and driver of bus bearing Registration No. DL 1 P 1529. Gurdeep Singh* v. *Bhim Singh*, (2013) 11 SCC 507: (2014) 1 SCC (Civ) 598.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 29-2-2012]

Gurdeep Singh v. Bhim Singh, FAO No. 3716 of 2001, order dated 24-12-2008 (P&H), reversed

[780] — Ss. 166, 168 and 173 — Compensation — Permanent partial disability — Award of adequate compensation — Need of — *Held, disability means loss or impairment of earning power — Adequate compensation has to be awarded to not only for physical injury and treatment but also for loss of earning and inability to lead normal life* (Paras 15 and 16). *G. Ravindranath* v. *E. Srinivas*, (2013) 12 SCC 455: (2014) 1 SCC (Cri) 704: (2014) 1 SCC (Civ) 688: AIR 2013 SC 2974: (2013) 100 ALR 721: (2013) 130 AIC 224.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 1-7-2013]

[781] — Ss. 166, 168 and 173 — Compensation — Permanent partial disability — Serious injury case — 70% functional disability — Award of compensation without considering important heads — Unsustainability of — *Hence, compensation recomputed by considering all relevant heads of compensation. Sanjay Kumar* v. *Ashok Kumar*, (2014) 5 SCC 330: (2014) 2 SCC (Cri) 550: (2014) 3 SCC (Civ) 181: (2014) 104 ALR 236: (2014) 137 AIC 134.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 24-1-2014]

Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161, followed

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161; Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683: (2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82: (2012) 1 SCC (L&S) 422; Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, applied

Sanjay Kumar v. Ashok Kumar, MAC Appeal No. 549 of 2007, decided on 21-3-2013 (Del), modified

[782] — Ss. 166, 168 and 173 — Contributory negligence — Findings of fact of Tribunal/High Court if sustainable — Issues whether deceased was driving scooter under influence of alcohol when he met with the accident and whether there was negligence on his part in causing accident — Non-consideration of by Tribunal as well as High Court while rejecting claim of appellants — Impropriety — *CW 2 Head Constable who had reached place of occurrence within 15 minutes stating that R-1 driver of pick-up van being driven rashly and negligently hit scooter being ridden by deceased and pillion rider, causing death of deceased was sent up for trial on grounds of negligence in connection with accident; specifically denying that scooter driven by deceased had*

dashed against stationary pick-up van; and further deposing that deceased was never medically examined to ascertain whether he was driving under influence of alcohol — Hence, finding of Tribunal as affirmed by High Court that accident had occurred on account of contributory negligence of deceased justifies interference by Supreme Court — Held, accident had occurred due to rash and negligent driving by R-1 — Appellant claimants entitled to compensation of Rs 6,66,041.78 as quantified by Tribunal with 6% p.a. rate of interest from date of award of Tribunal — Constitution of India (Paras 13 to 15)

The appellant claimants were the wife and daughters of one *N* who died in a motor vehicle accident that had occurred on 29-6-1997. The deceased was driving a scooter and one *R* was riding pillion. It was alleged that one pick-up van driven by R-1 came from the opposite direction; though the deceased tried to avoid the pick-up van which was being driven in a rash and negligent manner, the rear mudguard of the pick-up van hit the scooter as a result of which the deceased and the pillion rider fell off and suffered injuries resulting in death of deceased. The Tribunal framed four issues for trial in the case. Though under Issue 3 the Tribunal assessed the compensation payable to the claimants at Rs 6,66,041.78, in view of the findings recorded against Issues 1 and 4 (whether the deceased or R-1 was negligent and responsible for the accident), the Tribunal came to the conclusion that the appellants claimants are not entitled to any compensation. The High Court having affirmed the findings and the conclusion of the Tribunal, the present appeal was filed. The Supreme Court, held as above. *Dulcina Fernandes* v. *Joaquim Xavier Cruz*, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73: AIR 2014 SC 58: (2014) 2 Mah LJ 510: (2014) 2 MPLJ 679.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi**, J. [Date of decision: 8-10-2013]

Dulcina Fernandes v. Joaquim Xavier Cruz, First Appeal No. 216 of 2004, decided on 14-11-2008 (Bom), set aside

[783] — Ss. 166, 168 and 173 — Death in motor accident — Persons competent to claim compensation under S. 166 MV Act in case of — Right of legal representatives of deceased — Scope — Corporate body or Collective entity when may claim compensation as legal representative — Challenge to said right at subsequent stage in higher court (through writ petition) — Limitations on — *Held, in case of death of a person in motor accident, a person claiming to be a legal representative of deceased has locus to file claim under S. 166 MV Act, either directly or through any agent, subject to result of dispute/objection raised by opposite party on said issue — Further, the proceeding before Motor Accidents Claims Tribunal being summary in nature, unless there is evidence before Claims Tribunal in support of such pleading that the claimant is not a legal representative and therefore the claim petition is liable to be dismissed as not maintainable, no such plea can be raised at a subsequent stage and that too through a writ petition — In present case, one AC, a Roman Catholic, joined Appellant 1 Charitable Society renouncing his family pursuant to rules of that Society — After death of AC in a motor accident, Appellant 1 Society claiming compensation in respect thereof under MV Act through its duly authorised agent Appellant 2 — Contention raised before High Court by Insurance Company that in absence of any family or heir of AC, Appellant 1 Society could not file said claim petition for want of locus standi — Issue regarding maintainability of claim petition neither pleaded by Insurance Company nor any evidence led by it in respect of that issue — That apart, said issue, though framed by Accidents Claims Tribunal, was not pressed by opposite parties during trial — Despite said fact, Tribunal answering said issue in favour of appellant claimants after relying upon various judgments of Foreign as well as Indian Courts — In these circumstances, impugned order of High Court setting aside Tribunal's award [granting compensation of Rs 2,52,000 to appellants] on ground that appellants were not competent to claim compensation under MV Act, held, not tenable and therefore set aside — Order of Tribunal restored — CPC, 1908, S. 2(11) — Mizoram Motor Accidents Claims Tribunal Rules, 1988, R. 2(c) — Words and Phrases — "Legal representative" — Fatal Accidents Act, 1855, S. 1-A. Montford Bros. of St. Gabriel* v. *United India Insurance*, (2014) 3 SCC 394: (2014) 4 SCC (Cri) 628: (2014) 2 SCC (Civ) 282: AIR 2014 SC 1550: (2014) 1 CTC 886: (2014) 4 Mah LJ 15: (2014) 2 MPLJ 715: (2014) 135 AIC 68: (2014) 3 LW 1: (2014) 104 ALR 221.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh**, JJ. [Date of decision: 28-1-2014]

Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234: 1987 SCC (Cri) 482, affirmed

Megjibhai Khimji Vira v. Chaturbhai Taljabhai, AIR 1977 Guj 195, held, affirmed

Sudama Devi v. Jogendra Choudhary, AIR 1987 Pat 239, impliedly approved

[784] — Ss. 166, 168 and 173 — Permanent disability — Compensation — Basic principles for award of compensation, reiterated — Routine

personal injury cases distinguished from serious cases of injury

The appellant claimant, an embroider, sustained serious injuries in an accident involving the vehicle in question. His right leg above the knee was amputated. His loss of earning capacity was assessed at 70%. He claimed compensation of Rs 15 lakhs whereas MACT awarded compensation of Rs 4,83,472 with 7% interest. Liability was fastened on R-2 Insurance Company. In appeal, the High Court enhanced the compensation to Rs 6,35,808.

Allowing the appeal,

Held :

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages

(*i*) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.

(*ii*) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(*a*) Loss of earning during the period of treatment;

(*b*) Loss of future earnings on account of permanent disability.

(*iii*) Future medical expenses.

Non-pecuniary damages

(*iv*) Damages for pain, suffering and trauma as a consequence of the injuries.

(*v*) Loss of amenities (and/or loss of prospects of marriage).

(*vi*) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (*i*), (*ii*)(*a*) and (*iv*). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (*ii*)(*b*), (*iii*), (*v*) and (*vi*) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. (Para 12)

A monthly income of Rs 4500 as claimed by the appellant claimant is reflective of ground realities and not exorbitant. Further, he was not cross-examined on the nature of his work. Hence, his monthly income is accepted as Rs 4500 even in the absence of any documents. Further, the Tribunal and the High Court erred in holding the appellant claimant to be unskilled labour. It cannot be accepted as the appellant claimant cannot have increment in his future income. Therefore "loss of future prospects" is added while calculating the compensation taking 50% of his existing income as future increase. Taking a multiplier of 18, "loss of earning capacity" is assessed at Rs 10,20,600. As the appellant claimant was in hospital for 3 months, "loss of earnings for period of treatment" is also added. Under this head, compensation of Rs 13,500 (Rs 4500 x 3) is awarded. Rs 75,000 is awarded towards medical expenses, attendant charges and conveyance charges. MACT and the High Court erred in not considering compensation under the heads of "loss of future enjoyment of life", and "pain and suffering". Therefore, the appellant claimant is awarded Rs 75,000 as "loss of marriage prospects". The right leg above the knee of the appellant claimant was amputated, hence it is justified to award compensation under "mental agony and pain and suffering", as he might face discrimination and stigma. Therefore, a sum of Rs 1,50,000 is awarded under this head. Further, as the appellant claimant got disabled, his chances of enjoying life and doing normal activities reduced. Therefore, he is awarded compensation of Rs 1,00,000 under "loss of amenities". The appellant claimant is considered to be entitled for "litigation expenses" and, therefore, a sum of Rs 25,000 is awarded to him. Thus, the compensation is enhanced to Rs 14,59,100. Further, rate of interest is increased from 7% to 9% from the date of accident till the date of realisation. (Paras 10 to 17). *Sanjay Kumar* v. *Ashok Kumar*, (2014) 5 SCC 330: (2014) 2 SCC (Cri) 550: (2014) 3 SCC (Civ) 181: (2014) 104 ALR 236: (2014) 137 AIC 134.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **V. Gopala Gowda**, JJ. [Date of decision: 24-1-2014]

Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161, followed

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161; Govind Yadav v. New India Insurance Co. Ltd., (2011) 10 SCC 683: (2012) 3 SCC (Civ) 1082: (2012) 1 SCC (Cri) 82: (2012) 1 SCC (L&S) 422; Balram Prasad v. Kunal Saha, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327; MCD v. Uphaar Tragedy Victims Assn., (2011) 14 SCC 481: (2013) 1 SCC (Civ) 897: (2013) 2 SCC (Cri) 555: (2013) 1 SCC (L&S) 305, applied

Sanjay Kumar v. Ashok Kumar, MAC Appeal No. 549 of 2007, decided on 21-3-2013 (Del), modified

[785] — Ss. 166, 168 and 173 — Permanent partial disability — Compensation — Determination of — Non-pecuniary damages and non-accrued pecuniary damages — Adequacy of compensation in respect of — Evidence adduced to establish physical disability and deteriorated health condition — Evidence led to show requirement of future treatment — Non-consideration of, by forums below —

Untenability of — Appellant claimant becoming impotent and requiring future medical treatment — *MACT awarding Rs 1,85,000 and High Court enhancing it to Rs 4,00,000 as compensation — Held, MACT and High Court awarded meagre compensation to appellant-claimant — Considering his health conditions, especially that he had been rendered impotent in accident and lost prospect of marriage, and needed further and constant future treatment, compensation enhanced to Rs 20,20,000 with 6% interest under various heads of pecuniary and non-pecuniary damages — Workmen's Compensation Act, 1923, S. 4 — Evidence Act, 1872, S. 45*

The appellant claimant was 19 years old when he met with a serious accident. His pelvic region was fractured. Initially he was treated in a local hospital and later he was taken to Hyderabad for higher treatment. It was then diagnosed that he had sustained pelvic and total urethral rupture resulting in impotency. He claimed compensation before MACT by contending that he was student of Pre-University Course (PUC) II year and that he was assisting his parents in their agricultural fields. The other respondents did not contest this matter but the respondent-insurer contested this matter by taking all possible defences available to it.

Allowing the appeal of the appellant victim,

Held :

It is settled law that compensation in personal injury cases should be determined under the following heads:

Pecuniary damages (special damages)

(*i*) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food and miscellaneous expenditure. (Para 12.1)

(*ii*) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(*a*) Loss of earning during the period of treatment;

(*b*) Loss of future earnings on account of permanent disability. (Para 12.2)

(*iii*) Future medical expenses. (Para 12.3)

Non-pecuniary damages (general damages)

(*iv*) Damages for pain, suffering and trauma as a consequence of the injuries. (Para 12.4)

(*v*) Loss of amenities (and/or loss of prospects of marriage). (Paras 12.5 and 12.8)

(*vi*) Loss of expectation of life (shortening of normal longevity). (Para 12.6)

In routine personal injury cases, compensation will be awarded only under Heads (*i*), (*ii*)(*a*) and (*iv*). It is only in cases of serious injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the Heads (*ii*)(*b*), (*iii*), (*v*) and (*vi*) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. (Paras 12.7 and 12.8)

From the testimony of three expert witnesses i.e. three doctors who had treated the appellant, it was established that as a result of accident the appellant-claimant had suffered grievous injuries in the pelvic region and he has become impotent. It is also established that he has already undergone multiple surgeries and will have to take treatment in institutes like Nizam's Institute of Medical Science (NIMS) at Hyderabad for at least 10 years. (Para 21)

Unfortunately, the Motor Accident Claims Tribunal did not give due weightage to the evidence produced by the appellant-claimant and awarded meagre compensation and that too by overlooking the documentary evidence produced by the appellant-claimant regarding the expenses incurred by him at local hospital and NIMS at Hyderabad. The High Court also failed to properly analyse and evaluate the evidence produced by the appellant-claimant and did not adequately enhance the compensation determined by the Tribunal. (Para 22)

The appellant-claimant was entitled to Rs 2,20,000 towards the expenses incurred in the treatment including hospitalisation charges, mess and lodging charges, transportation, etc. For future medical expenses including hospitalisation, medicines, attendant charges, etc. he was entitled to Rs 6 lakhs. For pain, suffering and trauma, he was entitled to a sum of Rs 3 lakhs. For loss of amenities and prospects of marriage, he was entitled to Rs 4 lakhs. For loss of expectation of life and loss of future earning, he was entitled to a sum of Rs 5 lakhs. (Para 23)

Hence, the appellant-claimant is entitled to total compensation of Rs 20,20,000 with interest at the rate of 6% per annum from the date of filing the claim petition till the date of actual payment. Since the offending vehicle was insured with Respondent 2-insurer and no evidence was produced by it to prove that the driver was not having any valid licence or that there was any breach of the insurance policy, Respondent 2-insurer is held liable to pay the enhanced compensation and interest to the appellant-claimant. (Para 24). *G. Ravindranath* v. *E. Srinivas*, (2013) 12 SCC 455: (2014) 1 SCC (Cri)

704: (2014) 1 SCC (Civ) 688: AIR 2013 SC 2974: (2013) 100 ALR 721: (2013) 130 AIC 224.

Bench Strength **2**. Coram: *G.S. Singhvi* and *V. Gopala Gowda*, JJ. [Date of decision: 1-7-2013]

Ibrahim v. Raju, (2011) 10 SCC 634: (2012) 3 SCC (Civ) 1053: (2012) 1 SCC (Cri) 120; Ramachandrappa v. Royal Sundaram Alliance Insurance Co. Ltd., (2011) 13 SCC 236: (2012) 3 SCC (Civ) 452: (2012) 1 SCC (Cri) 825; Kavita v. Deepak, (2012) 8 SCC 604: (2012) 4 SCC (Civ) 558: (2012) 3 SCC (Cri) 997: (2012) 2 SCC (L&S) 711, followed

Ward v. James, (1966) 1 QB 273: (1965) 2 WLR 455: (1965) 1 All ER 568 (CA); R.D. Hattangadi v. Pest Control (India) (P) Ltd., (1995) 1 SCC 551: 1995 SCC (Cri) 250; Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka, (2009) 6 SCC 1: (2009) 2 SCC (Civ) 688; Reshma Kumari v. Madan Mohan, (2009) 13 SCC 422: (2009) 5 SCC (Civ) 143: (2010) 1 SCC (Cri) 1044; Arvind Kumar Mishra v. New India Assurance Co. Ltd., (2010) 10 SCC 254: (2010) 4 SCC (Civ) 153: (2010) 3 SCC (Cri) 1258; Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343: (2011) 1 SCC (Civ) 164: (2011) 1 SCC (Cri) 1161, considered

G. Ravindranath v. E. Srinivas, MFA No. 2478 of 2004, order dated 17-1-2012 (KAR), reversed

[786] — Ss. 166, 168 and 173 — Pleadings and proof — Degree of proof — Plea of negligence/contributory negligence — Held, has to be determined on touchstone of preponderance of probabilities and not on basis of proof beyond reasonable doubt (Para 7). *Dulcina Fernandes* v. *Joaquim Xavier Cruz*, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73: AIR 2014 SC 58: (2014) 2 Mah LJ 510: (2014) 2 MPLJ 679.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi**, J. [Date of decision: 8-10-2013]

[787] — Ss. 166, 168 and 173 — Pleadings and proof — Principles applicable to claim petition under MV Act — Non-adversarial nature of such claim — *Reiterated, award by the Tribunal cannot be seen as an adversarial adjudication between the litigating parties to a dispute, but a statutory determination of compensation on the occurrence of an accident, after due enquiry, in accordance with the statute — Tribunal is required to follow such summary procedure as it thinks fit — It may choose one or more persons possessing special knowledge of and matters relevant to inquiry, to assist it in holding the enquiry — Non-examination of pillion-rider involved in accident which led to death of driver of scooter — Effect — Hapless conditions of claimants on death of sole breadwinner, and long lapse of time between occurrence and recording of evidence — Relevance — Held, though it is undisputed that pillion rider could have best unfolded details of accident, but it also needs to be noted that evidence was recorded before Tribunal after seven years of occurrence — Considering hapless condition in which the claimants must have been placed after the death of their sole breadwinner and sufficiently long period of time that had elapsed, Tribunal should not have treated non-examination of pillion rider as fatal to the claim made before it by appellant* (Paras 9 and 10)

The appellant claimants were the wife and daughters of one *N* who died in a motor vehicle accident that had occurred on 29-6-1997. The deceased was driving a scooter and one *R* was riding pillion. It was alleged that one pick-up van driven by R-1 came from the opposite direction; though the deceased tried to avoid the pick-up van which was being driven in a rash and negligent manner, the rear mudguard of the pick-up van hit the scooter as a result of which the deceased and the pillion rider fell off and suffered injuries resulting in death of deceased. The Tribunal framed four issues for trial in the case. Though under Issue 3 the Tribunal assessed the compensation payable to the claimants at Rs 6,66,041.78, in view of the findings recorded against Issues 1 and 4 (whether the deceased or R-1 was negligent and responsible for the accident), the Tribunal came to the conclusion that the appellants claimants are not entitled to any compensation. The High Court having affirmed the findings and the conclusion of the Tribunal, the present appeal was filed. The Supreme Court, held as above. *Dulcina Fernandes* v. *Joaquim Xavier Cruz*, (2013) 10 SCC 646: (2014) 1 SCC (Civ) 73: AIR 2014 SC 58: (2014) 2 Mah LJ 510: (2014) 2 MPLJ 679.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi**, J. [Date of decision: 8-10-2013]

United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509: (2012) 3 SCC (Civ) 798: (2012) 1 SCC (Cri) 328; Bimla Devi v. Himachal RTC, (2009) 13 SCC 530: (2009) 5 SCC (Civ) 189: (2010) 1 SCC (Cri) 1101, applied

[788] — Ss. 166, 168, 173 and Sch. II — Death due to motor accident — Quantum of compensation — When may Sch. II be resorted to, to determine notional income of deceased in S. 166 claim — Duty of Tribunal/Court to award "just compensation" regardless of claim made — *Deceased was going on his bicycle to his contract work of polishing at about 10.30 a.m., when he was knocked down by a speeding bus driven in a negligent manner, causing him bodily injuries, eventually leading to his death — Held, both Tribunal as well as High Court erred in taking notional income of deceased at such a low figure as Rs 15,000 p.a. — Both Tribunal as well as High Court should have taken income of deceased as at least Rs 40,000 p.a. as per Sch. II though said amount is applicable only to claims under no fault liability — Even that is too low a figure, and it would be just and proper for Supreme Court to take a sum of Rs*

5000 as monthly income of deceased, having regard to nature of job that deceased was performing as a polisher, which is a skilled job, wherein annual income would come to Rs 60,000 — Keeping in view five dependants of deceased, 1/5th amount is to be deducted towards personal expenses — Having regard to age of deceased as 25 multiplier of 20 must be applied — Further, Rs 1,00,000 must be added under head of loss of consortium and Rs 1,00,000 under head of loss of care and guidance for minor children — Further, Rs 25,000 should be awarded under head of funeral expenses to claimants/legal representatives — Hence, total compensation assessed under various heads as follows: (i) Income:— Rs 5000 p.m., (ii) 50% of income to be added as future prospects:— Rs 7500 p.m., (iii) 1/5th of future prospects to be deducted as personal expenses of deceased:— Rs 6000 p.m., (iv) Compensation after multiplier of 20 is applied:— Rs 14,40,000 (Rs 6000 x 12 x 20), (v) Loss of consortium:— Rs 1,00,000, (vi) Loss of care and guidance for minor children:— Rs 1,00,000, (vii) Funeral and obsequies expenses:— Rs 25,000, (viii) Pain, loss and suffering:— Rs 25,000, (ix) Medical expenses:— Rs 3000, and (x) Attendant charges and transportation:— Rs 3000 — Thus, total compensation awarded comes to Rs 16,96,000 — Accordingly, compensation awarded is more than what was claimed by appellants, as it is statutory duty of Tribunal and appellate court to award just and reasonable compensation — Interest awarded @ 7.5% from the date of filing claim petition till the date of payment (Paras 12 to 21). *Sanobanu Nazirbhai Mirza* v. *Ahmedabad Municipal Transport Service*, (2013) 16 SCC 719: (2014) 6 SCC (Cri) 378: (2014) 5 SCC (Civ) 612: (2013) 101 ALR 721: (2013) 132 AIC 98.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 3-10-2013]

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149; Nagappa v. Gurudayal Singh, (2003) 2 SCC 274: 2003 SCC (Cri) 523, followed

Ahmedabad Municipal Transport Service v. Sanobanu Nazirbhai Mirza, First Appeal No. 1549 of 2002, decided on 11-1-2012 (Guj), reversed

[789] — Ss. 166 and 173 — Compensation — Computation of — Contributory negligence of claimant — Deduction on account of — Need for cogent evidence to establish — Imputation of contributory negligence — Permissibility — Victim being underage to drive/ride vehicle in question — Relevance — *Deceased, son of appellants, a student, was also doing agriculture and household work, and earning Rs 4000 p.m. — His parents were dependent on him — Said son was driving scooter on left side of road and that while scooter was approaching a curve in the road, bus driver did not blow horn and bus coming from the opposite direction was being driven at a very high speed, corroborated from testimony of PW 3, an unrelated eyewitness to accident — Held, in absence of any cogent evidence to prove plea of contributory negligence, said doctrine cannot be applied in present case — Reasoning given by High Court to impute contributory negligence only on ground that victim was underage to ride the scooter, has no basis, and compensation awarded by Tribunal was just and reasonable in the facts and circumstances of case — Impugned judgment of High Court set aside and award of Tribunal restored* (Paras 9 to 11). *Meera Devi* v. *H.P. RTC*, (2014) 4 SCC 511: (2014) 2 SCC (Civ) 567: (2014) 5 Mah LJ 1: (2014) 3 MPLJ 504: (2014) 2 Cal LJ 21.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 10-3-2014]

H.P. RTC v. Meera Devi, First Appeal from Order No. 441 of 2003, decided on 27-3-2006 (HP), reversed

[790] — Ss. 166 and 173 — Negligence — Contributory or composite (i.e. joint and several) — Distinction between, reiterated — *Appellant claimants represented two deceased and one injured person who were travelling in jeep owned by R-1 and driven by R-2, which met with an accident with a truck coming from opposite direction — As truck had fled from spot, driver/owner and insurer of said truck could not be impleaded in any claim petition — Thus, Tribunal denied compensation — High Court held that the drivers/owners of both the truck as well as the jeep, in which the deceased and the injured were travelling, were responsible for the accident and thus invoking the principle of contributory negligence held that the liability of the driver/owner of the truck should be estimated at 70% and that of the driver/owner of the jeep at 30% — Held, as neither driver/owner nor insurer of jeep have filed any appeal or cross-objection against findings of High Court that both vehicles were responsible for accident, the same are accepted — But, held, it is clear that High Court was not correct in apportioning liability for accident between the two vehicles — The present case is one of composite negligence of both vehicles — Hence, drivers/owners of both vehicles are jointly and severally liable to pay entire compensation in view of their composite negligence and it is open to claimants to enforce the award against both*

of them or entirely against any one of them — Order of High Court modified to that extent (Paras 7 to 11). *Pawan Kumar* v. *Harkishan Dass Mohan Lal*, (2014) 3 SCC 590: (2014) 4 SCC (Cri) 639: (2014) 2 SCC (Civ) 303: (2014) 4 Mah LJ 548: (2014) 3 MPLJ 1: (2014) 1 KLT 571: (2014) 103 ALR 675: (2014) 135 AIC 8: (2014) 2 LW 870.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

T.O. Anthony v. Karvarnan, (2008) 3 SCC 748: (2008) 1 SCC (Civ) 832: (2008) 2 SCC (Cri) 738; A.P. SRTC v. K. Hemlatha, (2008) 6 SCC 767: (2008) 3 SCC (Cri) 34, affirmed

Pawan Kumar v. Harkishan Dass Mohan Lal, FAO No. 695 of 1995, decided on 5-7-2006 (P&H), modified

Winfield & Jolowicz on Tort (Ch. 21, 15th Edn., 1998), relied on

— S. 166(4) *See* S. 158(6)

— S. 167 *See* S. 166

— S. 168 *See* S. 147; S. 149; S. 163-A; S. 166; S. 171; S. 173

See also CIVIL PROCEDURE CODE, 1908, Or. 21 R. 1, (2014) 5 SCC 577: (2014) 3 SCC (Civ) 220

[791] — S. 168 — Appropriate multiplier — Claimant aged 25 yrs suffering 100% disability in motor accident — Held, appropriate multiplier would be 17 and not 15 as determined by High Court (Para 17). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149; Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191: (2013) 3 SCC (Cri) 826, followed

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Shakti Devi v. New India Insurance Co. Ltd., (2010) 14 SCC 575: (2012) 1 SCC (Civ) 766: (2011) 3 SCC (Cri) 848, affirmed

[792] — S. 168 — Compensation — Computation — Future prospects of increase of income — Self-employed person — Claimant aged 25 yrs and having steady income — *Held, 50% increase to income that claimant was earning at time of accident justified* (Para 16). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

Rajesh v. Rajbir Singh, (2013) 9 SCC 54: (2013) 4 SCC (Civ) 179: (2013) 3 SCC (Cri) 817: (2014) 1 SCC (L&S) 149; Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191: (2013) 3 SCC (Cri) 826, followed

Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421: (2012) 3 SCC (Civ) 726: (2012) 3 SCC (Cri) 160: (2012) 2 SCC (L&S) 167; Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Shakti Devi v. New India Insurance Co. Ltd., (2010) 14 SCC 575: (2012) 1 SCC (Civ) 766: (2011) 3 SCC (Cri) 848, affirmed

[793] — S. 168 — Compensation — Cost of attendant — *Claimant suffering 100% disability in motor accident, paralysed for life, requiring assistance for daily chores at all times — Rs 2,00,000 awarded towards cost of attendant* (Para 22). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

[794] — S. 168 — Compensation — Determination of annual income — Income tax returns filed by claimant demonstrating that he had paid income tax on annual income of Rs 41,300 — *Hence held, no fault can be found with order of High Court which proceeded on that basis and not monthly income of Rs 5000 as claimed by claimant — Evidence Act, 1872, S. 35* (Para 12). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

[795] — Ss. 168, 163-A and Sch. II — Net salary/Take-home salary — Permissible deductions — Voluntary contributions made towards GPF, house rent, GIS if should be deducted — *Monthly salary of deceased Rs 26,924 and Rs 11,140 deducted under various heads like GPF, house rent, GIS and income tax by Tribunal calculating net salary at Rs 15,784 awarded total compensation of Rs 10,25,176, including Rs 5000 towards funeral expenses and Rs 10,000 towards mental agony — Held, except an amount of Rs 2500 towards income tax, rest were voluntarily contributed by deceased for welfare of his family as savings, cannot be deducted from monthly salary of deceased to decide net salary or take-home salary — Hence, take-home salary of deceased comes to Rs 24,450 rounded to Rs 25,000 — Applying multi-*

plier 8, appellant entitled to compensation as: Financial loss, 2/3rd of 25,000 x 12 x 8: Rs 16,00,000, for funeral expenses Rs 5000, mental agony Rs 10,000, total compensation Rs 16,15,000 with interest @ 6% p.a. from date of claim till date of payment — Judgments of courts below set aside (Paras 9 to 11). *Manasvi Jain* v. *DTC Ltd.*, (2014) 13 SCC 22: (2014) 5 SCC (Cri) 514: (2014) 5 SCC (Civ) 688: (2014) 105 ALR 265: (2014) 138 AIC 81.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 23-4-2014]

Shyamwati Sharma v. Karam Singh, (2010) 12 SCC 378: (2010) 4 SCC (Civ) 626: (2011) 1 SCC (Cri) 288, affirmed

DTC v. Manasvi Jain, 2008 ACJ 2239 (Utt), reversed

[796] — Ss. 168, 166 and 173 — Compensation — Determination of — Approach of courts/tribunals — Statutory duty to pay "just compensation" — *Held, Tribunals and High Courts are statutorily bound to award just compensation — Just compensation cannot be bonanza — Liberal approach must be taken for award of compensation under relevant laws — Adjudicatory authority has to take note of sufferings of injured person including his inability to lead full life, his incapacity to enjoy normal amenities and his ability to earn — Courts/Tribunals must have broad based approach and may indulge in some guesswork in determining quantum of compensation — Workmen's Compensation Act, 1923, Ss. 3, 4 and 30 — Fatal Accidents Act, 1855, S. 1-A* (Para 14). *S. Manickam* v. *Metropolitan Transport Corpn. Ltd.*, (2013) 12 SCC 603: (2014) 2 SCC (L&S) 588: (2014) 4 SCC (Cri) 435: (2014) 1 SCC (Civ) 727: AIR 2013 SC 2629: (2013) 3 KLT 248: (2013) 100 ALR 1: (2013) 128 AIC 69: (2014) 117 Cut LT 88: (2013) 5 LW 576.

Bench Strength **2**. Coram: **P. Sathasivam** and *M.Y. Eqbal*, JJ. [Date of decision: 1-7-2013]

Ramesh Chandra v. Randhir Singh, (1990) 3 SCC 723: 1990 SCC (Cri) 512; B. Kothandapani v. T.N. State Transport Corpn. Ltd., (2011) 6 SCC 420: (2011) 3 SCC (Civ) 343: (2011) 2 SCC (Cri) 1002; K. Suresh v. New India Assurance Co. Ltd., (2012) 12 SCC 274: (2013) 2 SCC (Civ) 279, followed

United India Insurance Co. Ltd. v. Veluchamy, (2005) 1 CTC 38, approved

Cholan Roadways Corpn. Ltd. v. Ahmed Thambi, (2006) 4 CTC 433, held, disapproved

[797] — Ss. 168 and 171 — Complete justice — Court can grant compensation beyond what was claimed in motor vehicle cases — *Constitution of India, Art. 142* (Para 20). *Sanjay Verma* v. *Haryana Roadways*, (2014) 3 SCC 210: (2014) 2 SCC (Cri) 149: (2014) 2 SCC (Civ) 289: AIR 2014 SC 995: (2014) 1 CTC 745: (2014) 118 Cut LT 423: (2014) 103 ALR 204: (2014) 135 AIC 123.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjan Gogoi** and *Shiva Kirti Singh*, JJ. [Date of decision: 29-1-2014]

[798] — Ss. 168 and 173 — Appeal — Reduction of compensation — Sustainability — 100% permanent disablement of electrician — *High Court, while maintaining award under loss of income for one year, special diet and transportation, medical expenses, reduced amount of Rs 2,00,000 for pain and suffering to Rs 1,00,000; Rs 4,00,000 for permanent disability to Rs 3,00,000; and Rs 6,60,000 as loss of future earnings to Rs 3,96,000 and reducing total award to Rs 9,56,000 from Rs 14,20,000 granted by Tribunal, without any reason — Appellant victim working as electrician suffering several serious injuries including amputation of complete left hand, severe injuries on head, dislocation of bones in hip and both knees and severe injuries in foot, with disability assessed at 100% — Held, Tribunal quite justified in allowing Rs 14,20,000 as total compensation based on monthly income of Rs 5000 — Dues payable to appellant to be deposited by respondent Insurance Company with Tribunal within eight weeks along with interest @ 9% from date of petition i.e. 27-8-1997 — Appellant entitled to withdraw said amount unconditionally* (Para 7). *M.D. Jacob* v. *United India Insurance Ltd.*, (2014) 9 SCC 234: (2014) 5 SCC (Cri) 24: (2014) 4 SCC (Civ) 795: AIR 2014 SC 988: (2014) 138 AIC 164: (2014) 104 ALR 728.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh**, JJ. [Date of decision: 21-1-2014]

— S. 170 *See* S. 173

— S. 170(b) *See also* S. 149(2); S. 166

[799] — Ss. 170(b), 173 and 149(2) — Appeal to High Court under S. 173 by Insurance Company challenging quantum of compensation only, without resorting to any grounds under S. 149(2) and without obtaining permission of Tribunal under S. 170(b) — Maintainability — *Insured though impleaded remaining absent despite service of notice, thus insured proceeded against exparte — Insurance Company appealing to High Court against Tribunal's order only by challenging quantum of compensation, held, is not maintainable — High Court therefore, erred in allowing the appeal and reducing the compensation — On merits also compensation awarded by Tribunal upheld and reduction made by High Court set aside (*see Shortnote ***B***). Josphine James* v. *United India Insurance Co. Ltd.*, (2013) 16 SCC

711: (2014) 6 SCC (Cri) 372: (2014) 5 SCC (Civ) 605: (2013) 5 CTC 681: (2013) 100 ALR 730: (2013) 130 AIC 144.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 14-8-2013]

National Insurance Co. Ltd. v. Nicolletta Rohtagi, (2002) 7 SCC 456: 2002 SCC (Cri) 1788; Baby Radhika Gupta v. Oriental Insurance Co. Ltd., (2009) 17 SCC 627: (2011) 1 SCC (Cri) 1098, applied

United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509: (2012) 3 SCC (Civ) 798: (2012) 1 SCC (Cri) 328, impliedly relied on

United India Insurance Co. Ltd. v. Josphine James, MAC Appeal No. 433 of 2005, decided on 13-1-2012 (Del), reversed

United India Insurance Co. Ltd. v. Bhushan Sachdeva, (2002) 2 SCC 265: 2002 SCC (Cri) 320, impliedly, held, overruled

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, distinguished on facts

— **S. 171** *See also* S. 166; S. 168

[800] — Ss. 171, 168 and 166 — Award of interest — Question as to what should be the rate of interest — Tribunals/Courts to decide this question — Factors for deciding rate of interest, discussed

Under Section 171 of the Motor Vehicles Act, 1988, no rate of interest has been fixed and its duty is bestowed upon the tribunal to fix the rate of interest. Therefore, it is for Tribunals and courts to decide the rate of interest after taking into consideration the rate of interest allowed by the Supreme Court in similar cases and other factors such as inflation, change in economy, policy adopted by Reserve Bank of India from time to time and the period since when the case is pending. (Paras 59 and 64). *Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

Abati Bezbaruah v. Geological Survey of India, (2003) 3 SCC 148: 2003 SCC (Cri) 746, followed

— **S. 173** *See also* S. 147; S. 149; S. 166; S. 168; S. 170(b)

[801] — S. 173 — Appeal — New plea at the stage of — Held, not permissible

The Insurance Company had neither produced the policy of insurance nor led any evidence to establish that as per the terms and conditions of policy extra premium had not been paid. Further, the owner of the vehicle did not appear before the Tribunal or the High Court but the Insurance Company did not pursue for his appearance. The High Court overlooked that the apportionment of the amount of compensation between the owner of the vehicle and the Insurance Company was an inter se dispute between the Insurance Company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the Tribunal. If the Insurance Company acquiesced with the situation and allowed the proceeding to continue even in absence of the insured/owner of the vehicle who has been held liable to pay the amount even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the Insurance Company and the claimant cannot be made to suffer. (Paras 24 and 25)

The plea of the Insurance Company all through was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the Insurance Company had not taken the alternative plea either before the Tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. This plea was never put to test or gone into by the Claims Tribunal since the Insurance Company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the Insurance Company straightaway at the appellate stage. (Para 26). *Ramchandra* v. *United India Insurance Co. Ltd.*, (2013) 12 SCC 84: (2014) 2 SCC (L&S) 686: (2013) 4 SCC (Cri) 158: (2014) 1 SCC (Civ) 286: AIR 2013 SC 2561: (2013) 100 ALR 227: (2013) 129 AIC 154: (2013) 5 LW 129.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Gyan Sudha Misra**, JJ. [Date of decision: 2-8-2013]

[802] — S. 173 — Appeal by insurer — Proper mode of disposal by High Court — Need to call for/consider terms of insurance policy, and carefully consider tenability of claims of insurer

Thus, the High Court was not correct in holding that the claimant was not entitled to any compensation over and above the liability under the Workmen's Compensation Act and hence the direction issued by the High Court that the Insurance Company will be liable to pay only Rs 32,091 and the balance will have to be shouldered by the insured/owner of the vehicle is fit to be struck down as invalid as the High Court had failed to examine the nature and clauses of the insurance policy in question, which was not produced even before the Tribunal. (Para 22)

The Insurance Company had neither produced the policy of insurance nor led any evidence to establish that as per the terms and conditions of policy extra premium had not been paid. Further, the owner of the vehicle did not appear before the Tribunal or the High Court but the Insurance Company did not pursue for his appearance. The High Court overlooked that the apportionment of the amount of compensation between the owner of the vehicle and the Insurance Company was an inter se dispute between the Insurance Company and the insured/owner of the vehicle and, therefore, the order due to non-appearance of the insured/owner of the vehicle could not have been passed to the detriment of the claimant as the claimant in any case is entitled to the amount of compensation determined by the Tribunal. If the Insurance Company acquiesced with the situation and allowed the proceeding to continue even in absence of the insured/owner of the vehicle who has been held liable to pay the amount even though the insured might have been liable to pay higher premium, the consequence of the same obviously will have to be borne by the Insurance Company and the claimant cannot be made to suffer. (Paras 24 and 25)

The plea of the Insurance Company all through was that the claimant is not entitled to any compensation beyond the extent of liability under the Workmen's Compensation Act and the Insurance Company had not taken the alternative plea either before the Tribunal or the High Court that in case the claimant is held entitled to compensation beyond the extent of liability under the Workmen's Compensation Act, the same was not payable as no extra premium was paid by the insured/owner under the policy of insurance. This plea was never put to test or gone into by the Claims Tribunal since the Insurance Company neither took this plea nor adduced any evidence to that effect so as to give a cause to the High Court to accept this plea of the Insurance Company straightaway at the appellate stage. (Para 26). *Ramchandra* v. *United India Insurance Co. Ltd.*, (2013) 12 SCC 84: (2014) 2 SCC (L&S) 686: (2013) 4 SCC (Cri) 158: (2014) 1 SCC (Civ) 286: AIR 2013 SC 2561: (2013) 100 ALR 227: (2013) 129 AIC 154: (2013) 5 LW 129.

Bench Strength **2**. Coram: *G.S. Singhvi* and **Gyan Sudha Misra**, JJ. [Date of decision: 2-8-2013]

[803] — S. 173 — Proper mode of disposal of appeal by High Court — Absence of rebuttal evidence by Insurance Company — Relevance. *Kishan Gopal* v. *Lala*, (2014) 1 SCC 244: (2014) 1 SCC (Cri) 241: (2014) 1 SCC (Civ) 184: (2013) 5 CTC 212: (2014) 3 Mah LJ 560: (2014) 2 MPLJ 569: (2013) 101 ALR 281: (2013) 131 AIC 219: (2013) 5 LW 205.

Bench Strength **2**. Coram: *G.S. Singhvi* and **V. Gopala Gowda**, JJ. [Date of decision: 26-8-2013]

[804] — Ss. 173 and 166 — Award of compensation — Appeal for enhancement — Departure from usual multiplier system and adoption of split multiplier by High Court without disclosing any reason — Unsustainability — *For deceased aged 48 yrs, multiplier of 10 applied instead of 13 as per decision in* Sarla Verma, *(2009) 6 SCC 121 — Future prospects of deceased also not considered — Deduction of 1/3rd towards personal expenses wrongly made by High Court which should be ¼th as there were four dependant family members — On facts, meagre enhancement of compensation (i.e. Rs 2,21,400) given by High Court set aside — Adopting correct multiplier of 13 and adding future income growth prospects (50%) and deduction of only ¼th, appellant claimants held entitled for compensation of Rs 23,43,688 along with interest on enhanced compensation @ 12% p.a.. Puttamma* v. *K.L. Narayana Reddy*, (2013) 15 SCC 45: (2014) 3 SCC (Cri) 574: (2014) 4 SCC (Civ) 384: AIR 2014 SC 706: (2014) 1 KLT 738.

Bench Strength **2**. Coram: *G.S. Singhvi* and **S.J. Mukhopadhaya**, JJ. [Date of decision: 9-12-2013]

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002, followed

Sarla Verma v. DTC, (2009) 6 SCC 121: (2009) 2 SCC (Civ) 770: (2009) 2 SCC (Cri) 1002; Reshma Kumari v. Madan Mohan, (2013) 9 SCC 65: (2013) 4 SCC (Civ) 191: (2013) 3 SCC (Cri) 826, applied

Puttamma v. K.L. Narayana Reddy, Misc. First Appeal No. 2344 of 2004, decided on 19-3-2009 (KAR), reversed

[805] — Ss. 173, 168 and 166 — Appeal to High Court — Scope of interference with Claims Tribunal award — Applicability of normal rules of first appeal before High Court — Held, applicable to such appeals also — *CPC, 1908, S. 96. Sharanamma* v. *North-East Karnataka RTC*, (2013) 11 SCC 517: (2014) 1 SCC (Civ) 603.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 19-1-2012]

[806] — Ss. 173, 168 and 166 — Appeal to High Court — Scope of interference with Claims Tribunal award — Interference in findings of fact — *Held, generally, a finding of fact recorded by Tribunal should not be interfered with in an appeal until and unless it is proved that glaring discrepancy or mistake had taken place — If the assessment of compensation by the Tribunal was fair and reasonable and the award of the Tribunal was neither contrary nor inconsistent with the relevant facts as per the evidence available on record*

then High Court should not interfere in the appeal — In the case in hand, nothing could be pointed out as to any glaring discrepancies or mistakes in the impugned award of the Tribunal, which necessitated the appellate court to take a different view in the matter (Para 12). *Sharanamma* v. *North-East Karnataka RTC*, (2013) 11 SCC 517: (2014) 1 SCC (Civ) 603.

Bench Strength 2. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 19-1-2012]

[807] — Ss. 173, 170, 149(2) and 163-A — Rights of insurer as appellant, when he is merely a noticee under S. 149(2) and not party to claim proceedings — Scope of — Reference to larger Bench — *Matter standing referred to a larger Bench by Supreme Court in* Shila Datta, *(2011) 10 SCC 509 on doubting decision of Supreme Court in* Nicolletta Rohtagi, *(2002) 7 SCC 456, for consideration in terms of Points (iii) to (v) mentioned in* Shila Datta case — *High Court in instant case after placing reliance on* Nicolletta Rohtagi case, *dismissing the insurer's appeal challenging Tribunal's award due to failure of insurer to comply with S. 170 of MV Act — Propriety — In view of the above judgment in* Shila Datta case, *present matter referred to a larger Bench with regard to decision on Points (iii) to (v) referred to in* Shila Datta case — *Constitution of India, Art. 141* (Paras 2, 3 and 14). *United India Insurance Co. Ltd.* v. *Sunil Kumar*, (2014) 1 SCC 680: (2014) 1 SCC (Civ) 642: (2013) 6 CTC 891: (2013) 4 KLT 488.

Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 29-10-2013]

United India Insurance Co. Ltd. v. Shila Datta, (2011) 10 SCC 509: (2012) 3 SCC (Civ) 798, followed

National Insurance Co. Ltd. v. Nicolletta Rohtagi, (2002) 7 SCC 456: 2002 SCC (Cri) 1788, held, doubted

[808] — S. 173(1) — Appeal — Appreciation of evidence — *Held, while deciding the appeal High Court should have considered the evidence produced by appellant regarding his injuries and consequential disability and decided whether Tribunal was justified in awarding Rs 1,15,830 only for the loss of future income and whether appellant was entitled to additional amount for future medical treatment* (Para 11). *M. Mani* v. *New India Assurance Co. Ltd.*, (2013) 11 SCC 444: (2014) 1 SCC (Civ) 577.

Bench Strength 2. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 2-1-2012]

— **S. 192** *See* S. 39

— **Sch. II** *See* S. 163-A; S. 166; S. 168

— **Sch. II r/w S. 163-A(3)** *See* S. 163-A(1) and Sch. II r/w S. 163-A(3)

5. MOTOR VEHICLES RULES, 1994

— **Rr. 203 and 204** *See* (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

MULTIPLE, MULTI-PARTY OR SINGLE CONTRACT/COMPOSITE CONTRACT

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Particular Contractual Forms

MULTISTOREYED BUILDINGS/ COLONISATION/ NEW COLONIES

See HOUSING, CONSTRUCTION AND REAL ESTATE

MUNICIPAL AUTHORITIES/CIVIL/PUBLIC AMENITIES/INFRASTRUCTURE PROVIDED BY LOCAL

See LOCAL GOVERNMENT — 'Town Planning'

MUNICIPALITIES

See LOCAL GOVERNMENT

MUSLIM LAW

See FAMILY AND PERSONAL LAWS

MUSLIM WOMEN (PROTECTION OF RIGHTS ON DIVORCE) ACT, 1986

See FAMILY AND PERSONAL LAWS — 'Muslim Law'

NATURAL JUSTICE

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1. GENERALLY — NATURE, SCOPE AND APPLICABILITY

— Compliance with principles of natural justice required though compliance with CPC not required — Testing validity of procedure followed by tribunal —

Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Tribunals, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

2. AUDI ALTERAM PARTEM — RIGHT TO HEARING

(a) Generally — Meaning, Nature, Scope and Applicability

See ADMINISTRATIVE LAW — 'Natural Justice' — Audi Alteram Partem — Right to Hearing — Generally — Meaning, Nature, Scope and Applicability, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49

(b) Implied Applicability

— Applicability of principles of natural justice — Determination of — If a statutory provision could be read consistently with the principles of natural justice, the courts would prefer do so — That is because it can be presumed that the legislature and the statutory authorities intend to act in accordance with such principles — In case, however, the statutory provisions either specifically or by necessary implication exclude the application of the principles of natural justice, the court cannot ignore the mandate of the legislature and read into any such provision the principles of natural justice *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 48, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

(c) Notice/Show-cause

[809] — Notice of proceedings in court — Plea of absence of such notice — On facts, found baseless — *Sahara Companies case — Fictitious investment/deposit scheme — Supreme Court via order dt. 31-8-2012 passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, directed two Sahara Companies to refund investor's money illegally collected by them — By further order dt. 5-12-2012 passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, time for deposit of money was extended by Supreme Court — On failure of companies to comply with above orders, contempt proceedings were initiated by SEBI — Matter was heard at least on 40 occasions when Supreme Court considered various proposals of contemnors for compliance — While disposing of these proceedings, Supreme Court finally, having failed to secure compliance with its orders in every other way, passed impugned order of detention of petitioner promoter of Sahara Companies dt. 4-3-2014 to enforce compliance of orders dt. 31-8-2012 and 5-12-2012 — Plea that detention order was not valid as petitioner had no notice of proceedings before Supreme Court, rejected — Notices in contempt petitions were issued by Supreme Court and their receipt should have been the first information to petitioner of Supreme Court's concern about non-compliance of order dt. 31-8-2012 — Petitioner was duly represented in contempt proceedings — Later, list of unencumbered immovable properties was furnished to secure amount payable to investors by Sahara Companies — This list could not have been furnished without petitioner's express approval, being promoter of the companies — In fact, after rejection of this list of properties by SEBI being insufficient to secure amount of refund, offer was made that other companies of Sahara Group would also make available their unencumbered properties — Hence, petitioner was in absolute charge of all affairs of companies — Further, stance adopted by petitioner promoter that only after his release from judicial custody further deposits will be possible, showed that in affairs of Sahara Group, he was the only person who mattered — Even restraint order was passed against petitioner and other contemnors not to leave India without Court's permission till compliance of Court's orders — Business obligations of petitioner were bound to have been seriously affected when order restraining Sahara Group of Companies to deal with its movable or immovable properties was passed — Held, in view of above facts, it was not open to petitioner to assert that he had no notice and was unaware of proceedings being conducted in Supreme Court or their gravity — Detention order of petitioner, held, valid — Constitution of India, Arts. 129, 142, 32 and 136 — CPC, 1908, S. 51* (Paras 42 to 58, 101 to 116 and 185.7). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

(d) Proper or fair hearing

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 5-A and 6(1), (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

— Matter heard by one officer — But order passed by his successor without giving a fresh hearing — Effect — Whether principles of natural justice violated in such a case *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', S. 5-A, (2014) 6 SCC 564: (2014) 3 SCC (Civ) 607

3. BIAS/NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA

(a) Generally — Meaning, Nature, Applicability and Scope

— Allegation of bias — When maintainable — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(b) Pleadings or Allegation of Bias

— When maintainable — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

(c) Real Likelihood of Bias/Reasonable apprehension of bias

— Possibility of — Need for there to be some surviving lis or dispute remaining to be adjudged, for there to even be occasion for bias *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

4. DUTY TO GIVE REASONS/RECORDING OF REASONS/SPEAKING ORDER

— Necessity — "Findings" — What includes *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

5. EFFECT OF VIOLATION OF NATURAL JUSTICE: VOID OR VOIDABLE

— Ex debito justitiae jurisdiction — If and When available *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

6. MALA FIDES/COLOURABLE EXERCISE OF POWER

(a) Burden of Proof/Proof of/Persons to be impleaded

See ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power — Burden of Proof/Proof of/Persons to be impleaded, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

(b) Malice in Law and Malice in Fact

See ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

NATURAL JUSTICE/REASONS/APPLICATION OF MIND

See CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power

See also PRACTICE AND PROCEDURE

NBFCS/NON-SCHEDULED BANKS/CHIT FUNDS/SAVING SCHEMES/FINANCIAL LEASING/HIRE-PURCHASE

See DEBT, FINANCIAL AND MONETARY LAWS

NEGLIGENCE

See TORT LAW

NEGLIGENCE/BANKING BUSINESS/ SERVICES/ CUSTOMER SERVICE/ TRANSACTIONS

See DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business

NEGOTIABLE INSTRUMENTS ACT, 1881

See DEBT, FINANCIAL AND MONETARY LAWS

NEMO DAT QUI NON HABET/NEMO DAT QUOD NON HABET

See DOCTRINES AND MAXIMS

NEMO DAT QUOD NON HABET/NEMO DAT QUI NON HABET

See DOCTRINES AND MAXIMS

See also PROPERTY LAW

NEMO DEBET BIS VEXARI PRO UNA ET EADEM CAUSA (NO MAN SHOULD BE VEXED TWICE OVER FOR THE SAME CAUSE)

See DOCTRINES AND MAXIMS

NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA/BIAS

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3. ABUSE OF PROCESS OF COURT/LAW/FRAUD ON COURT

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7. ADVERSE/DISPARAGING REMARKS/OBSERVATIONS/STRICTURES

[810] — Expunction of — Unwarranted observations about conduct of litigant during pendency of suit — Impropriety — *Construction and sale of flats by R-2 developer — R-1 purchaser filing suit for specific performance — In that suit, flat intended to be purchased by appellant purchaser was the subject-matter — Trial court passing orders for its sealing — On application moved by appellant purchaser, order of sealing flat set aside — In appeal, Division Bench of High Court observed that appellant purchaser approached court on basis of false and fabricated documents — Impropriety of — Held, during pendency of main suits, such observations against a litigant were not warranted — Hence expunged — Directions issued for expeditious disposal of suit by trial court — Constitution of India, Art. 136 — Specific Relief Act, 1963, Ss. 14 and 20 — Maharashtra Ownership of Flats (Regulation of Construction, Sale, Management and Transfer) Act, 1963 (45 of 1963), Ss. 2(a), 4, 8 and 11* (Para 11). *Vasanti Bhat* v. *Premlata A. Agarwal*, (2012) 13 SCC 700: (2014) 5 SCC (Civ) 414: (2013) 96 ALR 692: (2013) 122 AIC 93.

Bench Strength **2**. Coram: **P. Sathasivam** and *Ranjan Gogoi*, JJ. [Date of decision: 22-11-2012]

8. ALLOCATION OF WORK, ROSTER AND BENCHES

— Bench-hunting or bench-hopping or bench-avoiding — Attempts at — Need to be strongly repulsed *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty of Bench to which matter assigned by Chief Justice, who is the Master of the Roster *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

9. AMICUS CURIAE

[811] — Appointment of — Modification — Sahara Companies case — *Appointment of Mr F.S. Nariman, Senior Advocate as amicus curiae to assist Supreme Court by order dt. 4-6-2014 — Fact that Mr Nariman had appeared for Saharas up to 31-8-2012 when main judgment,* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, was delivered in Sahara case was brought to notice of Supreme Court on next day of passing of order of his appointment when Mr Nariman expressed his inability to act as amicus curiae — Hence, order of appointment modified — Mr Shekhar Naphade, Senior Advocate, requested to assist Supreme Court as amicus curiae on same terms and conditions as were stipulated for Mr Nariman* (Para 18). *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 8 SCC 741: (2014) 3 SCC (L&S) 95: (2014) 6 SCC (Cri) 92: (2014) 4 SCC (Civ) 624.

Bench Strength **3**. Coram: **T.S. Thakur**, *A.R. Dave* and *Dr A.K. Sikri*, JJ. [Date of decision: 22-7-2014]

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 8 SCC 751, modified

[812] — Appointment of — Sahara Companies case — *Having regard to nature of proceedings and stakes involved, Mr F.S. Nariman, Senior Advocate requested to assist Supreme Court as amicus curiae and his fees @ Rs 1.10 lakhs per hearing while that of his juniors @ Rs 10,000 per person for every hearing, also fixed — Same to be borne by contemnor Sahara Companies — Constitution of India, Arts. 129 and 142* (Paras 26.6 and 26.7). *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, (2014) 8 SCC 751: (2014) 3 SCC (L&S) 105: (2014) 6 SCC (Cri) 101: (2014) 4 SCC (Civ) 634: (2014) 141 AIC 264.

Bench Strength **2**. Coram: **T.S. Thakur** and *Dr A.K. Sikri*, JJ. [Date of decision: 4-6-2014]

***Modified in** SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 8 SCC 741*

[**Ed.**: See *SEBI* v. *Sahara India Real Estate Corpn. Ltd.*, order dated 22-7-2014, (2014) 8 SCC 741, by which the order of appointment of Mr Nariman as amicus curiae was modified. Mr Nariman on the very next day of passing of the order of his appointment informed the Supreme Court about his inability to act as amicus curiae as he had

also appeared for Saharas up to 31-8-2012 when the main judgment was delivered by the Supreme Court. Accordingly, Mr Shekhar Naphade, Senior Advocate was appointed as amicus curiae. The terms and conditions of his appointment remained the same as were stipulated for Mr Nariman.]

10. ANTI-SUIT INJUNCTION

— **Maintainability** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

11. APPEAL

See CIVIL PROCEDURE CODE, 1908, Or. 41 Rr. 1, 31 & 33 and S. 96, (2014) 1 SCC 602: (2014) 1 SCC (Civ) 497

— Or. 41 Rr. 17, 19 and 21, (2014) 5 SCC 723

See also CONSTITUTION OF INDIA — 'Article 226' — Appeal against/Review of orders passed under Art. 226/Writ appeals/LPAs, Art. 226, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— **Generally** *See* 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

See also RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

— **Abatement** *See* CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP — Abatement of appeal/SLP against dead person, Art. 136, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

— **First appeal — Nature and scope — Proper mode for disposal of — Duty of first appellate court** *See* CIVIL PROCEDURE CODE, 1908, S. 96, (2011) 15 SCC 476: (2014) 2 SCC (Civ) 619

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— **Grounds stated in memorandum of appeal — If not established by evidence, cannot be considered** *See* CONSTITUTION OF INDIA — 'Article 136' — Procedure to be followed re Art. 136 — Pleadings and Particulars, Art. 136, (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— **Natural Justice/Reasons/Application of mind — Hearing** *See* CONSUMER PROTECTION — 'Consumer Protection Act, 1986', Ss. 22 and 23, (2013) 14 SCC 610: (2014) 5 SCC (Civ) 439

— **New plea** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

— **Parties** *See* CIVIL PROCEDURE CODE, 1908, S. 96 and Or. 41 Rr. 4 & 20 and Or. 1 Rr. 3 & 4, (2013) 14 SCC 618: (2014) 5 SCC (Civ) 682

— **Production of additional evidence at appellate stage — When permissible** *See* CIVIL PROCEDURE CODE, 1908, Or. 41 R. 27(1)(aa) and S. 96, (2014) 13 SCC 468: (2014) 5 SCC (Civ) 725

— **Proper mode of disposal** *See* CIVIL PROCEDURE CODE, 1908, S. 96 and Or. 41 R. 31, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— **Remand** *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Judges vis-à-vis Judges, (2013) 12 SCC 392: (2014) 1 SCC (Civ) 476

— **Stay** *See* CIVIL PROCEDURE CODE, 1908, Or. 41 Rr. 1(3) & 5, (2014) 1 SCC 703: (2014) 1 SCC (Civ) 662

— **Subsequent events** *See* CIVIL PROCEDURE CODE, 1908, Ss. 96 & 100 and Or. 41 R. 33, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— **Substantial question of law** *See* TORT LAW — 'Workmen's Compensation Act, 1923', Ss. 30(1)(a) to (e) and S. 30(1) first proviso, (2014) 2 SCC 587: (2014) 2 SCC (Civ) 156

12. APPEAL/INTERFERENCE BY SUPREME COURT

— **Interim stay on condition of deposit** *See* CONSUMER PROTECTION — 'Consumer Protection Act, 1986', S. 19 second proviso, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598

13. APPROBATE AND REPROBATE

See also PROPERTY LAW — 'Ownership and Title', (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

— **Impermissibility** *See* CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power — Distribution of State largesse/Govt. contracts — Award of licences/permits/quotas, Art. 14, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

14. CAUSE OF ACTION/ACTION

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15. CIVIL AND CRIMINAL PROCEEDINGS

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16. COMPROMISE/CONSENT DECREE

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17. CONCESSION BY COUNSEL

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18. CONFIDENTIAL INFORMATION

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— **What is** *See* CIVIL PROCEDURE CODE, 1908, S. 96(3) and Or. 23 R. 3, (2013) 16 SCC 607: (2014) 5 SCC (Civ) 570

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— Abuse of process — Penal/Exemplary costs *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 48(1), 4 and 6, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

21. COUNTERCLAIM

— Limitation — Arbitration *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 43, 2(9), 8, 11 and 21, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571

22. COURT-AUCTION/SALE

See CIVIL PROCEDURE CODE, 1908, Or. 21 R. 89, (2014) 1 SCC 584: (2014) 1 SCC (Civ) 493

— Or. 21 R. 89(1)(a), (2012) 13 SCC 568

— Or. 21 R. 92(2), (2012) 13 SCC 568

— Or. 21 Rr. 84, 85 and 89(1)(a), (2012) 13 SCC 568

23. DELAY/LACHES/LIMITATION

See CIVIL PROCEDURE CODE, 1908, S. 114 r/w S. 53, Land Acquisition Act, 1894, (2014) 12 SCC 164: (2014) 5 SCC (Civ) 73

See also CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Tenancy and land matters, Arts. 226, 300-A and 14, (2013) 11 SCC 235: (2014) 1 SCC (Civ) 40

See also CONSUMER PROTECTION — 'Consumer Protection Act, 1986', Ss. 24-A and 12, (2013) 14 SCC 758: (2014) 3 SCC (Civ) 528

See also LAND ACQUISITION AND REQUISITION — 'Delay/Laches/Limitation', (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

See also LIMITATION — 'Generally', (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210

— 'Limitation Act, 1963', S. 5, (2011) 15 SCC 225

— Need for strict compliance with statutory scheme — Not permissible to extend period of limitation on equitable grounds if statute does not permit the same *See* LIMITATION — 'Condonation of Delay', (2013) 10 SCC 765: (2014) 1 SCC (Civ) 149

— Reasonable period *See* TENANCY AND LAND LAWS — 'Rajasthan Tenancy Act, 1955 (3 of 1955)', Ss. 175 and 42, (2014) 8 SCC 282: (2014) 4 SCC (Civ) 306

[813] — Review petition — Touching the merits of the case while refusing to condone delay — *Held, on facts, basic ground on which the review was filed by appellants was not considered by Single Judge of High Court — Thus, appellants were put to dual hardship — On the one hand, the delay had not been condoned and on the other hand even the merits were touched, for which no arguments had been advanced — Reiterated that such practices are disapproved — Impugned order set aside and quashed — Matter remitted to Single Judge of High Court who had decided the main matter, as per his convenience, to be heard only on merits of the review petition, in accordance with law — Delay stands condoned — CPC, 1908, Or. 47 R. 1 — Limitation Act, 1963, S. 5* (Paras 9 to 11 and 15). *S. Ganesharaju* v. *Narasamma*, (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210.

Bench Strength **2**. Coram: *Deepak Verma* and *K.S.P. Radhakrishnan*, JJ. [Date of decision: 27-3-2012]

S. Chandra Raju v. S. Subba Raju, RFA No. 1476 of 2005, decided on 15-7-2008 (KAR); S. Ganesharaju v. S. Chandra Raju, Review Petition No. 369 of 2008 in RFA No. 1476 of 2005, order dated 12-3-2009 (KAR), reversed

— Waiver — Inference of — Inordinate delay *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 4, 5-A, 6, 9 and 16, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

24. DIRECTIONS TO "CONSIDER"/"GRANT OF LIBERTY"

[814] — Words "grant of liberty" are to be understood, regard being had to the context in which they are used — Context is really material — *Words and Phrases — "Grant of liberty". Erach Boman Khavar* v. *Tukaram Shridhar Bhat*, (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387: AIR 2014 SC 544: (2014) 182 Comp Cas 84.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 12-12-2013]

Kewal Chand Mimani v. S.K. Sen, (2001) 6 SCC 512, explained and relied on

K.R. Steel Union Ltd. v. Poysha Industrial Co. Ltd., (2007) 4 Mah LJ 280: (2007) 3 Bom CR 821; Erach Boman Khavar v. K.R. Steel Union Ltd., Company Application No. 45 of 2006 in Company Petition No. 201 of 1994, order dated 23-2-2006 (Bom), affirmed

Tukaram S. Bhat v. K.R. Steel Union Ltd., (2010) 5 Mah LJ 967, reversed

25. ENFORCEMENT/EXECUTION OF COURT ORDERS

See 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also CIVIL PROCEDURE CODE, 1908, S. 47, (2014) 1 SCC 648: (2014) 1 SCC (Civ) 617

— S. 47 and Or. 21 & Or. 23 R. 3, (2014) 2 SCC 465

— S. 51, (2014) 8 SCC 470

— S. 51 proviso (a)(ii), (2014) 8 SCC 470

— S. 51 provisos (a)(i) & (b) and Or. 21 Rr. 30 & 37, (2014) 8 SCC 470

— Or. 21 R. 1, (2014) 5 SCC 577

— Or. 21 Rr. 1(1), (4) and (5) [before and after the 1976 Amendment], (2014) 5 SCC 577

See also COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Tribunals, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— (2014) 8 SCC 470

— Detention to ensure compliance *See* CIVIL PROCEDURE CODE, 1908, S. 51, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also CONSTITUTION OF INDIA, Arts. 129, 142 and 144, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[815] — Enforcement/execution of financial liability/money decree — Mode/method — Arrest and detention, held, is one of the permissible means by which financial liability imposed/decreed/ordered by court can be enforced — Submission that there is no provision of law whereunder such arrest and detention can be made, rejected — *Held, there are large number of stand-alone statutory enactments whereunder arrest and detention may be ordered for execution of financial liability — Provisions contained in CPC and CrPC whereunder court can order arrest and detention of person for execution of money decree or for enforcement of financial liability, discussed — CPC, 1908, Ss. 51, 55 & 58 and Or. 21 R. 30 — CrPC, 1973, Ss. 125(3), 128, 357, 421 and 431*

The order of detention of the petitioner (promoter of the Sahara Companies) dated 4-3-2014 was passed by the Supreme Court to enforce compliance with its directions passed in *Sahara India Real Estate Corpn. Ltd.*, (2013) 1 SCC 1, order dated 31-8-2012 and *Sahara India Real Estate Corpn. Ltd.*, (2013) 2 SCC 733, order dated 5-12-2012, wherein the two Sahara Companies were asked to refund investors' money which was illegally collected by the Companies by floating fictitious deposit schemes. Challenging the detention order, a submission was made that the execution of a money decree or enforcement of a financial liability by way of arrest and detention was a procedure unknown to law.

The two Sahara Companies owned by the petitioner-detenu were found to have floated fictitious deposit schemes and were directed by the Supreme Court vide order dated 31-8-2012 passed in *Sahara India Real Estate Corpn. Ltd.*, (2013) 1 SCC 1, and order dated 5-12-2012 passed in *Sahara India Real Estate Corpn. Ltd.*, (2013) 2 SCC 733, to refund the investors' money. The orders were not complied with by the companies in spite of several opportunities. Resultantly, to enforce compliance, by the impugned order dated 4-3-2014, *Sahara India Real Estate Corpn. Ltd.*, (2014) 5 SCC 429, passed in contempt proceedings, the Supreme Court ordered the detention of the contemnors being the Directors of the two companies along with the petitioner promoter, until the directions were complied with.

In the present writ petition challenging the detention order, a submission was made that it was imperative for the Supreme Court before ordering the detention of the petitioner to ensure compliance with the preconditions referred to in Section 51 CPC. It was further submitted that no procedure as prescribed under Order 21 Rules 37 and 40 CPC was followed before issuing the impugned order. On the basis of Order 13 Rule 6 of the Supreme Court Rules, 1966, it was sought to be asserted that the Supreme Court had transgressed this Rule as it had exercised the power of an executing court while passing the impugned order whereas no such power was vested in the Supreme Court.

Rejecting the submissions and upholding the detention order,

Held :

A perusal of Section 51 CPC leaves no room for any doubt that for the execution of a decree for payment of money, an executing court may order the arrest and detention of the judgment-debtor. Section 55 CPC lays down the manner and modalities to be followed while executing an order of arrest or detention. A perusal of Section 58 CPC postulates the detention of a judgment-debtor for up to six weeks for the recovery of a meagre amount of less than Rs 5000. Where the amount is in excess of Rs 5000, the provision postulates detention for up to three months. Interestingly, the first proviso to Section 58(1) CPC clearly brings out the purpose of the person's detention. It provides for the concerned person's release on the satisfaction of the money decree even before the duration for which he had been ordered to be detained. But the second proviso to Section 58(1) CPC provides that such an order of detention would not be revoked "without the order of the Court". Section 58(2) CPC provides that a person who has been ordered to be arrested and detained (in the course of execution of a money decree) and has been released from jail, would not be treated as having been discharged from his debt. In other words, the detention of a judgment-debtor in prison (for the execution of a money decree), would not liberate/free him from the financial liability which he owes to the decree-holder. It is therefore apparent from the provisions of CPC, that a court can order the arrest and detention of a person, even for the enforcement of a paltry amount of

Rs 2000 (and also for recovery of amounts in excess thereof). (Para 62)

Sections 125 and 128 CrPC mandate arrest and detention for compliance with a monetary payment. In *Kuldip Kaur*, (1989) 1 SCC 405, even for a petty amount of maintenance of Rs 275 per month, the respondent therein was ordered to be arrested and put in jail for his failure to comply with the court's order, with a further direction that he would not be released till he had made the payment. Most importantly, the purpose of sending a person to jail must be understood as being a manner, procedure or device, for the satisfaction of the liability. Arrest and detention is only to coerce compliance. The liability to pay would stand discharged only by actual payment of the amount due. Remaining in jail would not discharge the liability to pay. Other provisions of CrPC which can be referred to in the present context are Sections 357, 421 and 431 CrPC. It is therefore apparent that even under the provisions of CrPC there is an elaborate procedure prescribed, whereunder a person can be subjected to arrest and detention for the satisfaction of a fine or compensation i.e. for the satisfaction of a financial liability. (Paras 66 and 69)

From the above provisions of CPC and CrPC it is apparent that to enforce a financial liability ordered by a court, one of the permissible means is by way of arrest and detention. Thus, the submission that there is no provision whereunder an order of arrest and detention can be passed for the execution of a money decree cannot therefore be accepted. It may be pointed out that there are a large number of other stand-alone statutory enactments whereunder arrest and detention is ordered for the execution of a financial liability. (Paras 70 and 185.5)

The petitioner was aware of the seriousness of the issue on account of various restraining, corrective and deterrent orders passed by the Supreme Court from time to time each graver than the previous ones. He remained unaffected to all the efforts made by the Supreme Court to enforce refund of the monies collected by the two Companies to those who had invested in their OFCDs along with interest in terms of the Supreme Court's orders dated 31-8-2012 and 5-12-2012. It is, therefore, that the Supreme Court was left with no other option but to order the arrest and detention of two of the Directors and Subrata Roy Sahara. The above order was necessary to ensure the observance of the due process of law in the facts and circumstances of the case. The above order was also imperative if we were to perform our duties and functions effectively and if we were to maintain the majesty of law and/or the dignity of the Supreme Court. It is not possible to accept that while passing the detention order dated 4-3-2014 no opportunity was afforded to the petitioner Subrata Roy Sahara. Indeed every response made by the alleged contemnors was taken into consideration on each occasion. The alleged contemnors were found to be playing tricks with the Supreme Court. Not only were the Senior Counsel representing the alleged contemnors heard from time to time, personal hearing was also afforded to the Directors and Subrata Roy Sahara, the petitioner herein on 4-3-2014. In fact, Subrata Roy Sahara, the petitioner herein, was heard repeatedly to his heart's content before the order dated 4-3-2014 was passed. Thus, it is not possible to accept the contention advanced at the hands of the Senior Counsel for the petitioner, that the order dated 4-3-2014 was passed without following the rules of natural justice, or that, the above order violates any of the petitioner's fundamental rights. (Paras 114 and 115)

In the process to cajole the contemnors (including the petitioner Subrata Roy Sahara) into compliance with the Supreme Court's orders dated 31-8-2012 and 5-12-2012, the Court examined each and every defence raised on behalf of the two Companies. The Court also examined alternative avenues by which the compliance with the orders dated 31-8-2012 and 5-12-2012, could be ensured. However, the petitioner only engaged eminent Senior Counsel to avoid or defer compliance. (Para 55)

Despite affording the contemnors close to 40 hearings, and despite putting them to terms which ought to have shown them that leniency would not be extended forever the contemnors have remained adamant and steadfast. They made only one deposit of Rs 5120 crores on 5-12-2012. Besides that amount, not a single paisa has been deposited by the contemnors. The thought that repeatedly comes to our mind is, why had the two Companies not been able to pay anything for the last about 1+ years (close to 17 months) from the Supreme Court's order dated 5-12-2012, whereas, in a period of three/four months (before our order dated 31-8-2012) SIRECL claims to have unilaterally refunded Rs 17,443 crores, and SHICL claims to have on its own redeemed Rs 5442 crores to their investors? If the money could be easily collected and disbursed to the investors then, why not now? Considering the attitude of the petitioner before the Supreme Court, one wonders what would happen to the judicial system, if every Court order had to be implemented in the manner as the one in hand. The total amount presently payable in terms of the

Supreme Court's order dated 31-8-2012 has swelled up to Rs 36,608 crores. In the above scenario, no other order, but the one passed, could have been passed on 4-3-2014. (Para 57)

Our leniency is apparent from the fact that by the order dated 26-3-2014 the petitioner and the other contemnors have been permitted to be released on bail on the receipt of a payment of Rs 10,000 crores, which is less than a third of the amount presently due. That would constitute the first small step taken by the contemnors for the satisfaction of the orders passed by the Supreme Court on 31-8-2012 and 5-12-2012. The above orders must under all circumstances be given effect to in letter and spirit, and till that is done the process of enforcing compliance shall have to go on. The petitioner may be released from judicial custody if he complies with our order dated 26-3-2014. That would however not excuse the petitioner from making the balance payment in terms of the orders dated 31-8-2012 and 5-12-2012, even if it means the re-arrest of the petitioner again and again, for the purpose of compliance with the Supreme Court's orders. (Para 58). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Kuldip Kaur v. Surinder Singh, (1989) 1 SCC 405: 1989 SCC (Cri) 171, followed

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), affirmed

[**Ed.**: The Supreme Court in the present case, before coming to the conclusion as to the validity or otherwise of the impugned detention order dated 4-3-2014, made a detailed study of all the efforts that were made by the Supreme Court to cajole the contemnors, including the petitioner Subrata Roy Sahara, for compliance with the orders of the Supreme Court dated 31-8-2012 and 5-12-2012. *See* paras 45 to 58.]

[816] — Enforcement/execution of financial liability/money decree — Mode/method — Arrest and detention to enforce compliance — Adherence to principles of natural justice — *On facts, held, there was no violation of principles of natural justice while ordering detention of petitioner promoter and other Directors of Sahara Companies — Supreme Court in its earlier orders passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012 and* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, dt. 5-12-2012 had directed two Sahara Companies to refund investors money illegally collected by the companies — However, the companies failed to comply with these refund orders — SEBI via interlocutory applications (IAs) requested for arrest and detention of petitioner along with two other Directors of companies — Notice of these IAs was duly given to petitioner who had also filed his written response thereto by way of personal counter-affidavit — Several hearings (on more than 40 occasions) and opportunities were afforded to contemnors including petitioner to comply with Supreme Court's orders before passing of impugned order of detention — Every response made by alleged contemnors was taken into consideration on each occasion — Constitution of India, Arts. 142 and 129 — CPC, 1908, S. 51 — Constitution of India, Arts. 21, 14 and 19* (Paras 42 to 58, 101 to 116 and 185.7). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 5 SCC 429: (2014) 2 SCC (Cri) 618: (2014) 3 SCC (Civ) 190 (order dated 4-3-2014), explained and relied on

26. EVIDENCE AND PROOF

— Non-rebuttal of evidence — Oral submissions — Held, do not amount to rebuttal *See* EVIDENCE ACT, 1872, Ss. 137, 146 and 138, (2013) 11 SCC 435: (2014) 1 SCC (Civ) 568

27. EX PARTE HEARING/ PROCEEDINGS/ORDER/DECREE

See CIVIL PROCEDURE CODE, 1908, S. 151 and Or. 9 R. 13, (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197

See also CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — General principles for grant of special leave, Art. 136, (2014) 2 SCC 140: (2014) 1 SCC (Civ) 664

28. EXECUTING COURT

See COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

29. EXECUTION

See CIVIL PROCEDURE CODE, 1908, Or. 21 Rr. 35, 97, 101 and 99 and S. 115, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490

See also CONSTITUTION OF INDIA, Art. 142, (2011) 15 SCC 370: (2014) 2 SCC (Civ) 370

30. EXERCISE OF POWER/DISCRETIONARY POWER

See also CONSTITUTION OF INDIA, Arts. 137, 129, 136 and 32, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty to give "findings", held, implies duty to give reasons *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— Fundamental policy of Indian law — Fundamental juristic principles (non-exhaustive) applicable to every determination by a court or any authority, enunciated *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 34(2)(b)(ii), (2014) 9 SCC 263: (2014) 5 SCC (Civ) 12

31. EXPEDITIOUS/TIMELY DISPOSAL

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Delay/Speedy disposal, (2013) 14 SCC 1: (2014) 2 SCC (Civ) 382

32. EXPERT EVIDENCE/OPINION

See MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2013) 12 SCC 455: (2014) 1 SCC (Civ) 688

33. FRIVOLOUS LITIGATION/INFRUCTUOUS APPEAL OR PETITION OR ISSUE

See CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Maintainability, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Costs personally recoverable from Officers Concerned — Held, costs should be real and compensatory and not merely symbolic — Exemplary costs can be awarded where appeal is devoid of merit *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Costs personally recoverable from Officers Concerned — When warranted *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Expenses to be paid personally by official(s) concerned *See* CIVIL PROCEDURE CODE, 1908, Ss. 100 and 102, (2014) 3 SCC 156: (2014) 2 SCC (Civ) 265

— Making of baseless allegations/insinuations of violations of principles of natural justice and fundamental rights by Senior Counsel against court — Deprecated *See* ADVOCATES — 'Professional Standards, Ethics and Duties of Advocates', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

34. INFRUCTUOUS/FRIVOLOUS APPEAL/PETITION/ACADEMIC ISSUE/QUESTION

[817] — Futility of adjudication — Disqualification under S. 9-A RP Act, 1951 had become redundant/infructuous as previous Assembly was no longer in existence — *Election appeal under S. 116-A RP Act, 1951 — One of the two grounds of challenge referable to the only punishable offence under S. 123(6), RP Act, was not proved — Supreme Court without deciding issue of disqualification, held, it is a settled practice not to pronounce on matters which have been rendered academic — Representation of the People Act, 1951, Ss. 9-A, 123(6) and 116-A*

It is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence. Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest. (Paras 8, 7 and 6). *P.H. Pandian* v. *P. Veldurai*, (2013) 14 SCC 685: (2014) 5 SCC (Civ) 240.

Bench Strength **3**. Coram: *Dr A.S. Anand, C.J.* and *R.C. Lahoti* and *Ashok Bhan*, JJ. [Date of decision: 11-9-2001]

35. INHERENT POWER

See CIVIL PROCEDURE CODE, 1908, S. 151, (2013) 11 SCC 296: (2014) 1 SCC (Civ) 197

36. INTERIM/INTERLOCUTORY ORDER/INJUNCTION/STAY/INTERIM RELIEF

See CIVIL PROCEDURE CODE, 1908, Or. 39 Rr. 1 and 2, (2011) 15 SCC 95: (2014) 2 SCC (Civ) 246

— Or. 43 R. 1(r) and Or. 39 R. 1, (2014) 13 SCC 720

See also CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — Interim/Interlocutory orders, Art. 136, (2011) 15 SCC 428: (2014) 2 SCC (Civ) 611

— Appeal — Interim stay on condition of deposit *See* CONSUMER PROTECTION — 'Consumer Protection Act, 1986', S. 19 second proviso, (2014) 8 SCC 657: (2014) 4 SCC (Civ) 598

37. JUDGMENT/DECREE/ORDER

— Judgment — Findings — Specific findings on issues raised must be given by Court *See* CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Issues in question not determined, Art. 226, (2011) 15 SCC 495: (2014) 2 SCC (Civ) 627

— Judgment in rem *See* CONSTITUTION OF INDIA, Arts. 26(d) and 226, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

[818] — Judgment in rem — On question of law — Ruling on question of law concerned having attained finality — Different view on interpretation of law can be taken in subsequent decisions, provided same should not have effect of unsettling transactions already entered into — *Evidence Act, 1872, S. 41 — CPC, 1908, S. 11*

Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Para 40)

In this case the sole question is whether an issue in a case between the same parties, which had been finally determined could be negated relying upon interpretation of law given subsequently in some other cases, and the answer is in the negative. More so, nobody can claim that fundamental rights can be waived by the person concerned or can be taken away by the State under the garb of regulating certain activities. Although a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardised and this would create a chaotic situation which may bring instability in the society. (Paras 38 and 48). *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

[819] — Multiple issues — Courts must decide all issues if their orders are not final and appealable

It is necessary to reiterate herein a fundamental principle of law that all courts whose orders are not final and appealable, should take notice of. All such courts should decide the lis before it on all issues as may be raised by the parties though in its comprehension the same can be decided on a single or any given issue without going into the other questions raised or that may have arisen. Such a course of action is necessary to enable the next court in the hierarchy to bring the proceeding before it to a full and complete conclusion instead of causing a remand of the matter for a decision on the issue(s) that may have been left undetermined as has happened in the present case. The above may provide a small solution to the inevitable delays that occur in rendering the final verdict in a given case. (Para 23). *Chandradhoja Sahoo* v. *State of Orissa*, (2012) 13 SCC 419: (2014) 5 SCC (Civ) 654: AIR 2013 SC 367: (2013) 116 Cut LT 57.

Bench Strength **2**. Coram: *P. Sathasivam* and **Ranjan Gogoi**, JJ. [Date of decision: 14-12-2012]

38. JURISDICTION/JURISDICTIONAL ERROR/TERRITORIAL JURISDICTION

See ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(1)(e), 34 & 42 and Ss. 15 & 20 CPC, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206

See also CIVIL PROCEDURE CODE, 1908, S. 25, (2011) 15 SCC 222: (2014) 2 SCC (Civ) 358

— Ss. 15 to 20 and 24, (2014) 11 SCC 619

See also CONSTITUTION OF INDIA — 'Article 136' — Maintainability of SLP — Questions of fact, Art. 136, (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

See also RENT CONTROL AND EVICTION — 'Jurisdiction', (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759

— Ex debito justitiae jurisdiction — If and When available *See* CONSTITUTION OF INDIA — 'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Jurisdiction of Court *See* REORGANISATION AND ADMINISTRATION OF STATES, UTS & OTHER AREAS — 'U.P. Reorganisation Act, 2000 (29 of 2000)', S. 91, (2011) 15 SCC 127: (2014) 2 SCC (Civ) 347

39. LEGAL REPRESENTATIVES

See MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

40. MALA FIDES

— Proof of *See* ADMINISTRATIVE LAW — 'Natural Justice' — Mala Fides/Colourable exercise of Power — Burden of Proof/Proof of/Persons to be impleaded, (2013) 14 SCC 304: (2014) 2 SCC (Civ) 641

41. MONEY DECREE/MONEY SUIT

See CIVIL PROCEDURE CODE, 1908, Or. 37 R. 4 and 3(5), (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234

42. NATURAL JUSTICE/REASONS/APPLICATION OF MIND

See 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also CIVIL PROCEDURE CODE, 1908, S. 100, (2012) 13 SCC 405: (2014) 5 SCC (Civ) 647

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Exercise of power — Natural Justice/Reasons/Application of mind, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Compliance with principles of natural justice required though compliance with CPC not required — Testing validity of procedure followed by tribunal — Held, if an order is passed keeping in mind the parameters laid down in CPC, it would be sufficient to conclude that the rules of natural justice have been fully complied with *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Tribunals, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Duty to give "findings", held, implies duty to give reasons *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— Hearing in appeal *See* CONSUMER PROTECTION — 'Consumer Protection Act, 1986', Ss. 22 and 23, (2013) 14 SCC 610: (2014) 5 SCC (Civ) 439

— Violation of — Ex debito justitiae jurisdiction — If and When available *See* CONSTITUTION OF INDIA —

'Article 32' — Nature and Scope, Arts. 32, 21, 14, 136, 137, 129, 142 and 145(1)(e), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

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See also COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

44. NOTICE/SUMMONS/KNOWLEDGE OF PROCEEDINGS

See NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing' — Notice/Show-cause, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

45. NULL ORDER/NULLITY/VOID ORDER

See CIVIL PROCEDURE CODE, 1908, Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

46. PARTIES

See CIVIL PROCEDURE CODE, 1908, Or. 1 R. 9 and Or. 41 R. 20, (2014) 13 SCC 662: (2014) 5 SCC (Civ) 761

— S. 96 and Or. 41 Rr. 4 & 20 and Or. 1 Rr. 3 & 4, (2013) 14 SCC 618

47. PENDENCY/DELAY IN PROGRESS OF PROCEEDINGS

See RENT CONTROL AND EVICTION — 'U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972)', S. 21(1)(a), (2011) 15 SCC 794: (2014) 2 SCC (Civ) 762

48. PLEADINGS/NEW PLEA/ADDITIONAL PLEA/ALTERNATIVE PLEA

See also CIVIL PROCEDURE CODE, 1908, Or. 6 Rr. 2 and 4 and Or. 8 Rr. 3 to 5, (2014) 4 SCC 693: (2014) 2 SCC (Civ) 721

— New plea *See* CONSTITUTION OF INDIA — 'Article 136' — Procedure to be followed re Art. 136 — New plea, Art. 136, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304

— New plea at the stage of appeal — Permissibility of *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

[820] — New plea raised before High Court in writ petition under Art. 227 of Constitution of India — Issue as to maintainability of instant claim petition under MV Act neither pleaded by opposite party nor any evidence led by it in relation to that issue during trial — *That apart, opposite party not pressed the said issue framed by trial court — On such facts, held, High Court erred in adjudicating upon the said issue raised for the first time in writ petition under Art. 227 of Constitution of India — Constitution of India, Art. 227 — CPC, 1908, Or. 6 Rr. 1 & 2, Or. 14 Rr. 1 to 3 and Or. 20 Rr. 4(2) & 5 — Motor Vehicles Act, 1988, Ss. 166 and 168. Montford Bros. of St. Gabriel* v. *United India Insurance*, (2014) 3 SCC 394: (2014) 4 SCC (Cri) 628: (2014) 2 SCC (Civ) 282: AIR 2014 SC 1550: (2014) 1 CTC 886: (2014) 4 Mah LJ 15: (2014) 2 MPLJ 715: (2014) 135 AIC 68: (2014) 3 LW 1.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **Shiva Kirti Singh, JJ.** [Date of decision: 28-1-2014]

Gujarat SRTC v. Ramanbhai Prabhatbhai, (1987) 3 SCC 234: 1987 SCC (Cri) 482, affirmed

Megjibhai Khimji Vira v. Chaturbhai Taljabhai, AIR 1977 Guj 195, held, affirmed

Sudama Devi v. Jogendra Choudhary, AIR 1987 Pat 239, impliedly approved

49. POWER-OF-ATTORNEY

See DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', Ss. 142, 145 and 138 and S. 200 CrPC, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343

— Ss. 142 and 138, (2014) 11 SCC 790

[821] — Plaint by power-of-attorney holder maintainable on behalf of original plaintiff as long as he has personal knowledge of the transaction — Ruling laid down in *Janki Vashdeo Bhojwani*, (2005) 2 SCC 217 under CPC, 1908 — Interpretation of — *In a way an exception to well-settled position that criminal law can be put in motion by anyone [vide* Vishwa Mitter, *(1983) 4 SCC 701] and strangers to transaction in question, namely, legal heir, etc. can also carry forward pending criminal complaint or initiate criminal action if original complainant dies (vide* Ashwin Nanubhai Vyas, *AIR 1967 SC 983) — CPC, 1908, Or. 7 and 1 — CrPC, 1973, Ss. 200 to 204 — Evidence Act, 1872, S. 60. A.C. Narayanan* v. *State of Maharashtra*, (2014) 11 SCC 790: (2014) 4 SCC (Civ) 343: AIR 2014 SC 630: (2013) 180 Comp Cas 258: 2014 Cri LJ 576: (2013) 5 CTC 560: (2013) 4 KLT 21: (2013) 131 AIC 160: (2014) 1 LW 698: (2014) 1 Cal LT 53.

Bench Strength **3**. Coram: **P. Sathasivam, C.J.** and *Ranjana P. Desai* and *Ranjan Gogoi*, JJ. [Date of decision: 13-9-2013]

[822] — Rights of power-of-attorney holder (PoA holder) — Reiterated, he cannot depose in place of principal — Scope of word "acts" occurring in Or. 3 Rr. 1 and 2 CPC, held, is confined to acts done by PoA holder in exercise of power granted by virtue of the relevant instrument — *It does not include deposing in place and instead of principal — Similarly PoA holder cannot depose for the principal in respect of a matter regarding which only principal can have personal knowledge and incurs the liability to be cross-examined — CPC, 1908, Or. 3 Rr. 1 and 2 — Words and Phrases*

— "Acts" — Powers of Attorney Act, 1882, Ss. 1-A and 2

It is a settled legal proposition that the power-of-attorney holder cannot depose in place of the principal. The word "acts" employed in Order 3 Rules 1 and 2 CPC is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts" would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is liable to be cross-examined. (Para 23). *S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23: AIR 2013 SC Supp 265: (2013) 98 ALR 241: (2013) 125 AIC 25.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 10-4-2013]

50. POWERS OF ATTORNEY ACT, 1882

— Ss. 1-A and 2 *See* 'Power-of-Attorney', (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

51. PRESUMPTIONS

See also EVIDENCE ACT, 1872, Ss. 4 and 101 to 117, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

— Presumption of fact raised by statute — Distinguished from legal fiction *See* EVIDENCE ACT, 1872, Ss. 4 and 101 to 117, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

52. PRIVILEGED COMMUNICATIONS

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Duties of Doctors and Medical Ethics' — Doctor and Patient, (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

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— Drawing inference(s) from established facts can be considered a question of law *See* CIVIL PROCEDURE CODE, 1908, S. 115, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

54. RECALL OF WITNESS

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— Refusal to recuse when plea for recusal a ploy to unnecessarily prolong the matter — Consciously calculated attempt to prolong proceedings by recusal of present Bench which was well-versed with the entire facts of the case — Deprecated stringently and plea for recusal, rejected *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

56. REJOINDER

See CIVIL PROCEDURE CODE, 1908, Or. 8 R. 9, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

57. RELIEF

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See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— Entitlement to *See* (2013) 16 SCC 538: (2014) 5 SCC (Civ) 523

— Equitable relief — Entitlement to *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— Relief claimed in the alternative on inconsistent grounds in plaint — Permissibility of — Principles reiterated — Manner of adjudication of such alternative pleas *See* CIVIL PROCEDURE CODE, 1908, Or. 7 Rr. 8 & 7, Or. 6 R. 7 and S. 100, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103

58. REMAND

See also ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c) and 17, (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— Forum to which matter remanded — Jurisdiction — Matters at large *See* CONSUMER PROTECTION — 'Consumer Forums' — Exercise of power — Generally, (2014) 1 SCC 384: (2014) 1 SCC (Civ) 327

[823] — Jurisdiction of court upon remand to it — Res judicata — *Issues which had attained finality cannot be reopened by court to which remand is made (remandee court), nor can remandee court go beyond issues remanded to it — CPC, 1908, Or. 41 Rr. 23-A, 23 and S. 11 — Constitution of India, Art. 136. Ni Pra Channabasava Deshikendra Swamigalu Matadhipathigalu Kannada Mutt* v. *C.P. Kaveeramma*, (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 6-5-2013]

— **When not necessary** *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

59. REMAND/FINAL DISPOSAL/ORDER

See COURTS, TRIBUNALS AND JUDICIARY — 'Judiciary' — Judges vis-à-vis Judges, (2013) 12 SCC 392: (2014) 1 SCC (Civ) 476

60. RES JUDICATA

See CIVIL PROCEDURE CODE, 1908, S. 11, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

See also (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

[824] — Applicability — Held, to attract principle of res judicata at successive stages of same litigation, adjudication of claim on merits at earlier stage is necessary — *In present case, appellant-landlord filed application before Company Judge under S. 446 of Companies Act, 1956 for grant of leave/permission to file eviction suit against R-2 company (tenant) in liquidation — Company Judge did not deal with this application on merits and on basis of statement of R-3 opined that it was not necessary to grant present Judge's summons and thereafter gave liberty to appellant to apply, if necessary — In view of liberty granted, appellant filed second application for grant of leave to file eviction suit — Leave granted by Company Judge — Division Bench of High Court in appeal, however, set aside this order granting leave on ground that earlier order of Company Judge operated as res judicata, hence, second application for grant of leave was barred — Sustainability — Held, in absence of decision on first application on merits with regard to grant or refusal of leave, earlier order of Company Judge could not be treated to have operated as res judicata — Doctrine of res judicata was not applicable — Order of Division Bench set aside and order granting leave by Company Judge, restored — CPC, 1908, S. 11 — Maharashtra Rent Control Act, 1999 (18 of 2000), S. 3(1)(b) — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 13. Erach Boman Khavar* v. *Tukaram Shridhar Bhat*, (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387: AIR 2014 SC 544: (2014) 182 Comp Cas 84.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 12-12-2013]

Satyadhyan Ghosal v. Deorajin Debi, AIR 1960 SC 941; Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993; Prahlad Singh v. Col. Sukhdev Singh, (1987) 1 SCC 727; C.V. Rajendran v. N.M. Muhammed Kunhi, (2002) 7 SCC 447; Saroja v. Chinnusamy, (2007) 8 SCC 329; Y.B. Patil v. Y.L. Patil, (1976) 4 SCC 66, followed

Arukkani Ammal v. Guruswamy, (1987) 100 LW 707 (Mad), held, approved

Kewal Chand Mimani v. S.K. Sen, (2001) 6 SCC 512, explained and relied on

K.R. Steel Union Ltd. v. Poysha Industrial Co. Ltd., (2007) 4 Mah LJ 280: (2007) 3 Bom CR 821; Erach Boman Khavar v. K.R. Steel Union Ltd., Company Application No. 45 of 2006 in Company Petition No. 201 of 1994, order dated 23-2-2006 (Bom), affirmed

Tukaram S. Bhat v. K.R. Steel Union Ltd., (2010) 5 Mah LJ 967, reversed

— **Constructive res judicata** *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Res judicata, Arts. 226, 32 and 136, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259

See also ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Cinemas, Videos and Cable Television' — Delhi Cinematograph Rules, 1953, Rr. 10, 24, 37 and Sch. I, (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

See also EVIDENCE ACT, 1872, S. 112, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

[825] — Constructive res judicata — Meaning and basis of res judicata, and its applicability to all civilised legal systems of world — *Doctrine of res judicata is founded on a twofold logic: (1) that there must be finality to adjudication by competent court; and (2) no man should be vexed twice for the same cause — These two principles attract the doctrine of res judicata even to inter partes decisions that may be erroneous on a question of law. Shiv Chander More* v. *Lt. Governor*, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259: AIR 2014 SC 2669: (2014) 2 Cal LJ 225: (2014) 2 Cal LT 67.

Bench Strength **2**. Coram: **T.S. Thakur** and *Chockalingam Nagappan*, JJ. [Date of decision: 7-3-2014]

Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara, AIR 1964 SC 1013; Devilal Modi v. STO, AIR 1965 SC 1150; Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715: 1990 SCC (L&S) 339: (1990) 13 ATC 348, followed

[826] — Defence raised and rejected in one proceeding — Raising of same defence in subsequent proceedings (for the fourth time) — Impermissibility — *Held, party cannot raise same defence again — However, on facts, in interest of justice, Supreme Court not only permitted raising of same defence again but even examined such defence — Sahara Companies case — Order of Supreme Court passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, dt. 31-8-2012, directing two Sahara Companies to refund investors' money illegally collected by them — In another appeal and writ petition filed by these Sahara Companies before Supreme Court, defence was raised that they should be exempted from depositing amounts which were already redeemed/refunded by them — Not accepting this theory of redemption and disposing of said appeal and writ petition, Supreme Court by order dt. 5-12-2012 passed in*

Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, had extended time for deposit of investors' money — In contempt proceedings for non-compliance with both orders dt. 31-8-2012 and 5-12-2012, same defence of having already redeemed most of OFCDs was again raised by companies and was also examined by Supreme Court — In present writ petition challenging detention order of petitioner promoter of Sahara Companies imposed for non-compliance with orders dt. 31-8-2012 and 5-12-2012, Supreme Court again examined issue of redemption for petitioner's satisfaction though such plea was no longer available as same was concluded by order of Supreme Court dt. 5-12-2012 — Having so examined, theory of redemption of OFCDs found unacceptable yet for the fourth time on merits: see* Shortnotes ***ZH to ZK — Constitution of India, Arts. 32, 136 and 129 — CPC, 1908, S. 11*** (Paras 55 and 153). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Dismissal for default, reiterated, cannot operate as res judicata *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

61. REVIEW

See CIVIL PROCEDURE CODE, 1908, S. 114, (2013) 15 SCC 534: (2014) 5 SCC (Civ) 358

— S. 114 r/w S. 53, Land Acquisition Act, 1894, (2014) 12 SCC 164

— Or. 47 R. 1 Expln., (2014) 5 SCC 75

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Delay/Laches/Limitation *See* CONSTITUTION OF INDIA, Art. 137, (2014) 7 SCC 662: (2014) 3 SCC (Civ) 797

— Scope *See* CONSTITUTION OF INDIA, Arts. 137, 129, 136 and 32, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

62. REVIEW/RECALL

See 'Delay/Laches/Limitation', (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210

See also CIVIL PROCEDURE CODE, 1908, S. 122 and Or. 47 R. 5, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473

— Delay/Laches/Limitation *See* CIVIL PROCEDURE CODE, 1908, Or. 47 R. 1 and S. 96, (2013) 11 SCC 341: (2014) 1 SCC (Civ) 210

— Nature and object of — Reason for provision of hearing by same Judge as far as possible *See* CIVIL PROCEDURE CODE, 1908, S. 114 and Or. 47, (2011) 15 SCC 330: (2014) 2 SCC (Civ) 473

63. REVISION

See CIVIL PROCEDURE CODE, 1908, S. 115, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

See also CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

See also (2013) 15 SCC 222: (2014) 5 SCC (Civ) 225

See also RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

See also TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

See also TENANCY AND LAND LAWS — 'U.P. Consolidation of Holdings Act, 1953 (5 of 1954)', S. 48, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

— Generally *See* 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

See also RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

[827] — Revisional jurisdiction — Scope of — Compared with appellate jurisdiction — *Where both expressions "appeal" and "revision" are employed in a statute, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by expression "appeal" — Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and also of a "revision" — CPC, 1908, Ss. 115 and Ss. 96 & 100 — Words and Phrases — "Revision" and "Appeal". Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh*, (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723: AIR 2014 SC 3708: (2014) 144 AIC 209: (2014) 5 CTC 217: (2014) 4 KLT 182: (2014) 4 LW 753: (2014) 107 ALR 697.

Bench Strength **5**. Coram: **R.M. Lodha, C.J.** and *Dipak Misra, Madan B. Lokur, Kurian Joseph* and *S.A. Bobde*, JJ. [Date of decision: 27-8-2014]

Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246; Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259, affirmed

64. STATE AS A LITIGANT/PARTY

See also CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Costs personally recoverable from Officers Concerned — Held, costs should be real and compensatory and not merely symbolic — Exemplary costs can be awarded where appeal is devoid of merit *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

— Costs personally recoverable from Officers Concerned — When warranted *See* CIVIL PROCEDURE CODE, 1908, S. 35, (2014) 13 SCC 666: (2014) 5 SCC (Civ) 762

[828] — Frivolous litigation by State — Refusal to take any responsibility — *Held, abuse of the*

judicial process is not limited to any particular class of litigants — The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions — So much so that the courts have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason

What is sought to be redressed is a habituation to press illegitimate claims. This practice and pattern is so rampant that in most cases disputes which ought to have been settled in no time at all before the first court of incidence are prolonged endlessly for years and years and from court to court up to the highest Court. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that the Courts have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason. In private litigation as well, the litigant concerned would continue to approach the higher Court, despite the fact that he had lost in every court hithertobefore. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate he must pay for the same. In the present setting of the adjudicatory process a litigant no matter how irresponsible he is, suffers no consequences. Every litigant, therefore, likes to take a chance even when counsel's advice is otherwise. (Paras 192 and 193). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

— Frivolous Litigation/Infructuous Appeal or Petition or Issue — Frivolous litigation — Expenses to be paid personally by official(s) concerned *See* CIVIL PROCEDURE CODE, 1908, Ss. 100 and 102, (2014) 3 SCC 156: (2014) 2 SCC (Civ) 265

65. SUMMARY SUIT

See CIVIL PROCEDURE CODE, 1908, Or. 37 R. 4 and 3(5), (2013) 11 SCC 754: (2014) 1 SCC (Civ) 234

66. TRANSFER

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— Ground for *See* CIVIL PROCEDURE CODE, 1908, S. 25, (2011) 15 SCC 222: (2014) 2 SCC (Civ) 358

67. WITNESSES

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5. INTERPRETATION OF JUDGMENTS

[829] — Repetitive use of words — Held, to understand correct ratio stated in a case, it is necessary to appreciate repetitive use of words — *Constitution of India, Art. 141* (Para 28). *Voltas Ltd.* v. *Rolta India Ltd.*, (2014) 4 SCC 516: (2014) 2 SCC (Civ) 571: AIR 2014 SC 1772.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 14-2-2014]

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See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Other forums that are bound — High Courts, Art. 141, (2011) 15 SCC 487: (2014) 2 SCC (Civ) 623

10. RATIO DECIDENDI

[830] — What court actually decides, not what follows from it, would be binding — *Ratio of a decision should be understood in background of facts of the case and can be relied on considering how fact situation of case fits in case to be relied on*

The ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. (Para 47). *Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

[831] — What is — Explained — *Held, ratio decidendi of a judgment has to be culled out from entire judgment, upon reading it as a whole — A line from a judgment or one observation from here and there does not acquire status of "ratio decidendi" of the judgment — Constitution of India, Art. 141*

The ratio of any decision must be understood in the background of the facts of that case. The case is only an authority for what it actually decides, and not what logically follows from it. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or Judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. It is always dangerous to take one or two observations out of a long judgment and treat them as if they gave the ratio decidendi of the case. If more reasons than one are given by a tribunal for its judgment, all are taken as forming the ratio decidendi. (Paras 32 to 34)

According to the well-settled theory of precedents, every decision contains three basic postulates: (*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and (*iii*) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. (Para 35)

The ratio decidendi of a judgment has to be found out only on reading the entire judgment. The ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment. (Para 36)

The judgments rendered by a court are not to be read as statutes. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. The observations must be read in the context in which they appear to have been stated. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. Judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a Judge uses a phrase or expression with the intention of emphasising a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation. (Paras 38 and 39)

The argument that the phraseology used in *SBP*, (2005) 8 SCC 618 i.e. "subsistence of an arbitrable dispute required to be decided" has to be read in harmony with the words "when there existed no arbitrable dispute" cannot be brought to the eminence of ratio decidendi of the judgment. The stress laid thereon may be innovative but when the Supreme Court itself culled out the ratio decidendi in para 39 of *SBP case*, it is extremely difficult to state that the principle stated in *SBP case* requires the Chief Justice or his designate to decide the controversy when raised pertaining to arbitrability of the disputes, or to express an opinion on excepted matters. Such an inference by syllogistic process is likely to usher in catastrophe in jurisprudence developed in this field. It is not apposite to pick up a line from here and there from the judgment or to choose one observation from here or there for raising it to the status of "the ratio decidendi". That is most likely to pave one on the path of danger and it is to be scrupulously avoided. The propositions set out in *SBP case* have been correctly understood by the two-Judge Bench in *Boghara Polyfab case* and the same have been appositely approved by the three-Judge Bench in *Chloro Controls India (P) Ltd.*, (2013) 1 SCC 641. (Para 40). *Arasmeta Captive Power Co. (P) Ltd.* v. *Lafarge India (P) Ltd.*, (2013) 15 SCC 414: (2014) 5 SCC (Civ) 302: AIR 2014 SC 525: (2014) 182 Comp Cas 115: (2014) 1 CTC 415: (2014) 2 KLT 1053: (2014) 102 ALR 680: (2014) 134 AIC 213.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 12-12-2013]

Ambica Quarry Works v. State of Gujarat, (1987) 1 SCC 213; Quinn v. Leathem, 1901 AC 495 (HL); Krishena Kumar v. Union of India, (1990) 4 SCC 207: 1991 SCC (L&S) 112: (1990) 14 ATC 846; Caledonian Railway Co. v. Walker's Trustees, (1882) LR 7 AC 259: (1881-85) All ER Rep 592: 46 LT 826 (HL); State of A.P. v. A.P. Jaiswal, (2001) 1 SCC 748: 2001 SCC (L&S) 316; State of Orissa v. Mohd. Illiyas, (2006) 1 SCC 275: 2006 SCC (L&S) 122; Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697; Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1; Union of India v. Amrit Lal Manchanda, (2004) 3 SCC 75: 2004 SCC (Cri) 662; Som Mittal v. State of Karnataka, (2008) 3 SCC 574: (2008) 2 SCC (Cri) 1: (2008) 1 SCC (L&S) 910, followed

SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618; National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267: (2009) 1 SCC (Civ) 117; Shree Ram Mills Ltd. v. Utility Premises (P) Ltd., (2007) 4 SCC 599; Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641: (2013) 1 SCC (Civ) 689, explained and followed

Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388, held, overruled

11. SMALLER BENCH VIS-À-VIS LARGER/COORDINATE BENCH

See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court whether itself bound — Inter-bench conflicts, Art. 141, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

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1. GENERALLY

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6. COMMON LAW PRINCIPLES

[832] — Applicability of, subject to statutes — *Constitution of India, Art. 372 — Transfer of Property Act, 1882, Ss. 100 and 58* (Paras 18 and 19)

Insofar as dues of the Government in the form of tax or excise, etc. are concerned, as per the common law principle of Crown debt they prevail over the rights of only unsecured creditors. The principle of Crown debt pertains to the common law principle. When Parliament or the State Legislature makes an enactment, the same would prevail over the common law and thus the common law principles which existed on the date of coming into force of the Constitution of India, must yield to a statutory provision. A debt, which is secured or which by reason of the provisions of a statute becomes the first charge over the property must be held to prevail over the Crown debt which is an unsecured one. On this reasoning, the debt payable to the secured creditor like the Financial Corporation was prioritised vis-à-vis the Central Excise dues. (Para 18). *Rana Girders Ltd.* v. *Union of India*, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130: AIR 2013 SC 3422: (2013) 295 ELT 12.

Bench Strength 2. Coram: *Anil R. Dave* and **A.K. Sikri**, JJ. [Date of decision: 16-8-2013]

7. EASEMENTS ACT, 1882

— Ss. 7, 13 and 55 *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

See also LOCAL GOVERNMENT — 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— Ss. 3(i) and 3(f) and Ss. 11 to 13, (2014) 12 SCC 231

[833] — Ss. 7, 13 and 55 — Essential appurtenant rights — What are, and what are not — "Common areas and facilities" "essential" for beneficial enjoyment of flats/apartments in housing colony — Scope of — *Community centre and commercial facilities, statutorily required to be provided by coloniser in the colony in addition to "common areas and facilities" such as corridors, lobbies, staircases, lifts and fire escape, etc., held, cannot be called as common areas and facilities which are essential for enjoyment of flats/apartments — Words and Phrases — "Common areas and facilities"*

As per Section 3(3)(*a*)(*iv*) of the Haryana Development and Regulation of Urban Areas Act, 1975 (HDRUA Act), an obligation is cast on the coloniser to construct "at its own cost" or get constructed by any other institution or an individual at its own cost, schools, hospitals, community centres and other community buildings on the land set apart for the said purpose. In the alternative, the coloniser can also transfer to the Government, at any time, if so desired by the Government, free of cost, the land set apart for these community facilities, in which case, the Government shall be at liberty to transfer such land to any person or institution, including a local authority on such terms and conditions, as it may deem fit. In such situation, the cost of construction of these facilities can either be met by the Government or by the transferee of the Government. Therefore, the cost incurred in discharging the obligations under Section 3(3)(*a*)(*iv*) of the HDRUA Act has to be borne either by the coloniser or, on transfer of the land free of cost, by the Government or the government transferee. As per the statute, the cost incurred for construction, in that event, cannot be passed on or recovered from the

plot-holders/apartment owners in the colony. An agreement has to be entered into by the coloniser with the Director, Town and Country Planning, Haryana (DTCP) under the HDRUA Act by which the coloniser is prohibited by law from recovering the cost of providing the community and commercial facilities from the apartment owners. Further, the ownership of the land set apart for the construction of the community facilities continues with the coloniser and this ownership cannot be transferred or divested, unless the coloniser itself volunteers to transfer the same free of cost to the Government. (Paras 33 to 35 and 58)

Community and other facilities like schools, hospitals, community centres, shops, etc. provided in the land set apart under Section 3(3)(*a*)(*iv*) of the HDRUA Act are meant for the benefit of the entire colony and not for the apartment owners in one part of the colony The facilities to be provided under Section 3(3)(*a*)(*iv*) of the HDRUA Act are based on the prescribed norms which are population based and the quantum/number of each type of amenity and its placement at various places in the colony (plotted areas or group housing) are, as per the lay-out plans duly approved by the Director of Town and Country Planning (DTCP) under the HDRUA Act. DTCP has prescribed the requirement for each amenity/commercial facility for DLF City, Phases I, II and III, comprising of a total area of 1542 acres, under a composite layout plan of all the three phases, treating three phases as a single colony. As per the approved layout plans, these amenities are earmarked at various sites in the colony, some in the plotted areas and some in the group housing areas. So far as the present case is concerned, the layout plans pertaining to lands covered under various licences in the colony are not restricted to 130 acres alone, wherein Silver Oaks Group Housing is located in 14.75 acres. (Para 36)

No obligation is cast on the coloniser under the Haryana Apartment Ownership Act, 1983 (HAO Act) or the Rules framed thereunder to provide those community and commercial facilities which are specifically mentioned under Section 3(3)(*a*)(*iv*) of the HDRUA Act. But the coloniser has to provide various other facilities like "common areas and facilities", to the apartment owners, as provided under Section 3(*f*) of the HAO Act. The HAO Act casts an obligation on the coloniser to file a statutory declaration. Section 6 read with Section 3(*f*) of the HAO Act clearly indicates that the "common areas and facilities" enumerated under clauses (1) to (8), except the ones enumerated under clause (7) of Section 3(*f*) of the HAO Act are to be provided by the coloniser to the apartment owners and each apartment owner is entitled to an undivided interest in the common areas and facilities, in the percentage expressed in the declaration. The only exception is clause (7) of Section 3(*f*) of the HAO Act, which gives a right to the coloniser either to provide or not to provide in the declaration, the community and commercial facilities referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act. There is a marked difference between "common areas and facilities" and "community and commercial facilities". A coloniser is duty-bound to provide all the common areas and facilities as per Section 3(*f*) of the HAO Act, except community and commercial facilities referred to in Section 3(*f*)(7) of the HAO Act. "Common areas and facilities" referred to in Section 3(*f*)(7) of the HAO Act has a co-relation with the "community and commercial facilities" referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act. It is for that reason that a discretion has been given to the coloniser to either provide the same or not to provide the same in the declaration referred to in Section 3(*f*) of the HAO Act. The expression "may" used in Section 3(*f*)(7) of the HAO Act clearly indicates that no duty is cast on the coloniser to give an undivided interest over those community and commercial facilities exclusively to the apartment owners of a particular colony, since the same have to be enjoyed by other apartment owners of DLF City, Phases I, II and III as well. Even otherwise, the coloniser could not have parted with his ownership rights exclusively to one colony alone. (Paras 40 and 50)

The apartment owners are, therefore, not entitled to an undivided interest or possession over those community and commercial facilities, referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act, unless specifically provided by the coloniser in the statutory declaration under Sections 11 to 13 read with Section 3(*f*) of the HAO Act. All the same, the right to enjoy those facilities referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act, whether shown in the declaration or not, under the HAO Act, cannot be restricted or curtailed and the apartment owners have no other right, except the right of "user". The community centre, nursery schools, shops, etc., in the present case, therefore, being part of the approved layout plans by DTCP, can be used by the apartment owners and, being part of the larger colony, are intended for independent use of all the apartment owners having direct exit to common areas, to the public street, road, etc. (Paras 54 and 55)

The coloniser i.e. appellant DLF, in the instant case, had entered into an agreement LC-IVA under Rule 11 of the Haryana Development and Regula-

tion of Urban Areas Rules, 1976, whereby the coloniser had agreed to comply with the execution of internal development works, external development works and to construct at its own cost, community centres, community buildings, schools, hospitals, etc. in the areas earmarked for the same in the layout plan of the colony. Section 3(3)(*a*)(*iv*) of the HDRUA Act read with the clauses in the agreement executed by the coloniser would indicate that ownership of the portion of the land set apart for these facilities vests with the coloniser so also the obligation "at its own cost" to provide those. The coloniser cannot recover the cost of land or the amounts spent for providing those facilities from the apartment owners. It is for the said reason that clause (7) of Section 3(*f*) of the HAO Act has not made it obligatory on the part of the coloniser to include the "community and commercial" facilities in the declaration. If the coloniser includes the same within the declaration, then Section 6 of the HAO Act will kick in, consequently, the apartment owners would be entitled to the undivided interest in respect of the community and commercial facilities provided therein without bearing the cost incurred by the coloniser in purchasing the land and the cost of construction. The coloniser could not have included the community and commercial facilities referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act, because the same is meant for the benefit of the entire colony, not merely the flat/apartment owners in one part of the colony since they form part of the layout plans duly approved, which takes in plotted area and the group housing societies area as well. (Paras 30 and 59)

The argument that Silver Oaks Apartments is a "gated" colony and, therefore, the developments which have taken place inside the boundary walls of that colony are to be treated as parts of internal development works and, therefore, these are parts of common areas has no merit when examined in context of the nature of the structures developed by the developer/coloniser. These structures are two nursery schools, three shops and one community centre, which cannot be treated as "common areas and facilities" within the definition of Section 3(*f*) of the HAO Act. Even schools cannot be termed as part of "integral development" use whereof would be confined to residents of these apartments. Even the shops which are inside the boundary walls have their opening from outside to enable the shopkeepers to cater to the customers not only from these apartments, but outsiders as well. Common passages, staircases, lifts, etc. are the examples of such common areas and facilities. Likewise, stilt parking area may be treated as part of common areas and facilities, in certain circumstances. These structures, however, in the present case are the part of the larger area of about 130 acres in respect of which 7 licences were obtained for development of the colony. Silver Oaks Apartments, which comprises of 14.75 acres, is only a part thereof. Therefore, these structures are meant for the development of the entire colony and not for the exclusive use of the flat owners of Silver Oaks Apartments. The position would have been different had these been integral parts of the facilities, in the sense that these facilities are essential for the enjoyment of the flats. (Paras 56 and 57)

The High Court has committed an error in directing DTCP (the competent authority) to decide the objections of the apartment owners with regard to the declaration made by the coloniser. In a given case, if the developer does not provide common areas or facilities like corridors, lobbies, staircases, lifts and fire escape, etc. the competent authority can look into the objections of the apartment owners but when the statute has given a discretion to the coloniser to provide or not to provide as per Section 3(*f*)(7) of the HAO Act the facilities referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act, no objection could be raised by the apartment owners and they cannot claim any undivided interest over those facilities except the right of user. In the instant case, the apartment owners have raised no grievance that they are being prevented from using the community and commercial facilities referred to in Section 3(3)(*a*)(*iv*) of the HDRUA Act, but they cannot claim an undivided interest or right of management over them. In such circumstances, the judgment of the High Court is set aside and the writ petition filed before the High Court is dismissed. (Paras 63 and 65). *DLF Ltd.* v. *Manmohan Lowe*, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 10-12-2013]

Ansal Properties and Industries Ltd. v. State of Haryana, (2009) 3 SCC 553; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

Nahalchand Laloochand (P) Ltd. v. Panchali Coop. Housing Society Ltd., (2010) 9 SCC 536, distinguished

Manmohan Lowe v. State of Haryana, CWP No. 960 of 2000, order dated 9-9-2009 (P&H), reversed

— S. 13 *See* S. 7

— S. 52 *See also* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Presidency Small Cause Courts Act, 1882, S. 41(1) (as amended by Maharashtra Act 19 of 1976), (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

[834] — S. 52 — Licence — Expressions "licensor" and "licensee" — Meaning — Held, word "licence" is not popularly understood to mean

that it should be only on payment of licence fee, as it can also cover a gratuitous licensee — *Definition of "licensee" under S. 5(4-A) of Bombay Rent Act, 1947 is both exhaustive and inclusive and only covers a licensee whose licence is supported by material consideration hence, gratuitous licensee is not covered thereunder whereas S. 52, Easements Act, 1882 does not require any consideration, material or non-material to be an element of a valid licence — The provisions are not in pari materia — "Licensee" not defined in S. 41(1) (as amended in State of Maharashtra), Presidency Small Cause Courts Act, 1882, held, covers gratuitous licensee — Presidency Small Cause Courts Act, 1882, S. 41(1) (as amended in State of Maharashtra)* (Paras 46 to 53). *Prabhudas Damodar Kotecha* v. *Manhabala Jeram Damodar*, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260: AIR 2013 SC 2959: (2013) 100 ALR 378: (2013) 129 AIC 113.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dipak Misra*, JJ. [Date of decision: 13-8-2013]

— Ss. 52 and 60 to 63 *See also* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Allotment/Grant/Lease/Licence of land', (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

[835] — Ss. 52 and 60 to 63 — Licence and lease — Difference between — A licence by definition does not create any interest in the property — Essence of a licence is that it is revocable at the will of the grantor — *Transfer of Property Act, 1882, Ss. 105 and 111*

The nature of the legal rights flowing from the allotments of the appellants needs examination. The plots in dispute are property vested in a public body (statutory corporation) performing important public functions. In the matter of creating rights and/or conferring privileges such a body is required to act in the public interest under some rational policy. It can be seen from the language of the policy guidelines of 2004 and 2010 that the policy only enables the Board to renew the licences granted but does not create any vested right in favour of the licensor. Even the letter of allotment makes it clear that what is granted is only a licence. Therefore, the allotment of plots in dispute is only by way of a licence, as defined under Section 52 of the Easements Act, 1882. The Board desires to utilise the parcel of land in dispute (in this batch of cases) for a purpose which is authorised by law and serves better the larger interests of the nation-including the interests of the exporters and importers such as the appellants. Setting aside the order under appeal on the ground of breach of natural justice would be a futile exercise as explained earlier. The respondent Board/licensor can always terminate/revoke the licences. In view of the conclusion that the proposed revocation of licences would not amount to an irrational or arbitrary decision, rejecting the new plea of the Board or any ground would only lead to protracted litigation consuming considerable time and delay in execution of the project by the Board. Such a delay would not subserve public interest. The Supreme Court shall not contribute to such delay on the ground of some perceived procedural irregularity, particularly when the appellants have no substantive right. The appellants were given a wholesome opportunity by the Supreme Court to establish their legal right to prevent the Board from terminating their licences, but they could not establish any such right. (Paras 38 to 42, 47 and 48)

A licence by definition does not create any interest in the property. A licence only gives a right to use the immovable property of the grantor, to the grantee. There is no transfer of any interest in such property in favour of the grantee. On the other hand, under the Transfer of Property Act, 1882 an interest either limited or unlimited is created in favour of the transferee depending upon the nature of the transfer [sale (Section 54 TPA), mortgage (Section 58 TPA) or lease (Section 105 TPA), etc.]. Under Section 60 of the Easements Act, 1882, a licence is revocable at the will of the grantor which is the essence of a licence. The Easements Act categorically declares that a licence can be revoked by the grantor except in the two contingencies specified under Sections 60(*a*) and (*b*) of the Easements Act, 1882. No such exceptions are pleaded or demonstrated by the appellants. Therefore, it must be held that none of the appellants have any indefeasible right of renewal either under the Easements Act or under the abovementioned policy. However, that does not mean that a public body like the respondent Board can arbitrarily decline to renew a licence. If the Board decides not to renew any licence either with respect to a class of licences or with reference to a specific area of the land, normally such a decision cannot be said to be either irrational or arbitrary unless there are other compelling reasons to indicate that the decision has no rational purpose to be achieved. (Paras 43 and 44)

In the counter filed by the respondent Board, it is stated that the entire parcel of land which was allotted to the various appellants who are licensees of the manually operated from time to time by the Board in favour of iron ore exporters (except a small portion of the land allotted in favour of the Odisha Mining Development Corporation), is proposed to be utilised by the Board after terminating the licences of the appellants herein for creating

certain modern operational facilities in connection with the activities of Paradeep Port. Such a decision cannot be said to be arbitrary or an irrational exercise of authority of a public body, having regard to the object sought to be achieved by the Board of creating modern amenities. The exception in favour of the Odisha Mining Development Corporation cannot amount to discriminatory treatment of the appellants, since that Corporation is admittedly a State-owned corporation and forms a class by itself. Therefore, the proposed course of action by the Board to terminate neither infringes any legal right of the appellants nor amounts to an arbitrary exercise of the authority by the Board. In the circumstances, the decision of the Board does not warrant any interference. (Paras 45, 46 and 58 to 62). *Yazdani International (P) Ltd.* v. *Auroglobal Comtrade (P) Ltd.*, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161: (2014) 3 LW 450.

Bench Strength 2. Coram: *H.L. Gokhale* and **Jasti Chelameswar**, JJ. [Date of decision: 17-12-2013]

de Smith's Judicial Review of Administrative Action, 4th Edn., p. 561; Seervai, H.M.: Constitutional Law of India [Bombay: N.M. Tripathi (P) Ltd., 3rd Edn., Vol. 2 (1984), para 16.279, p. 1367], relied on

— S. 55 *See* S. 7

— S. 58 — Licensor's duties of care — Occupier's liability *See* TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— S. 60 *See* S. 52

— Ss. 60 to 64 *See* CIVIL PROCEDURE CODE, 1908, Or. 7 R. 3 & Or. 20 R. 12 and Ss. 100, 35 & 35-B, (2014) 3 SCC 645: (2014) 2 SCC (Civ) 315

— Ss. 60, 61 and 63 *See* CIVIL PROCEDURE CODE, 1908, Ss. 96, 10 and 11, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 39, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

See also 'Possession', (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

— Ss. 60 and 64 *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

— Ss. 61 to 63 *See* S. 52

— S. 63 *See also* CIVIL PROCEDURE CODE, 1908, Or. 7 Rr. 8 & 7, Or. 6 R. 7 and S. 100, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103

8. ENCUMBRANCES AND CHARGES

— Charge — Tax arrears vis-à-vis secured creditor — Tax statute if creates a first/overriding charge *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Crown Debt/Debt owed to State/Tax arrears, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Public charges in respect of property — Statutory liabilities "arising out of the land" or "arising out of the plant and machinery" *See* 'Transfer of Property Act, 1882', Ss. 54 and 55(1)(g) & (2) and Ss. 65(c), 76(c) & 108(g), (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Statutory charges — First charge/Overriding charge for recovery of sales tax dues created by statute *See* (2013) 14 SCC 619: (2014) 5 SCC (Civ) 681

9. EQUITABLE ESTATES AND INTERESTS

See 'Transfer of Property Act, 1882', Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

— Ss. 54, 53-A, S. 3 Expln. II, Ss. 48 and 40 Para 2, (2014) 12 SCC 190

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 15 and 19(b), (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— Enforcement of constructive trust under (prior) agreement to sell/contract for sale of immovable property against subsequent transferees who had notice thereof *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— Notice *See* 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776

10. ESTOPPEL, ACQUIESCENCE AND WAIVER

— Waiver of rights *See* HUMAN AND CIVIL RIGHTS — 'Displaced Persons and Refugees' — Evacuee Interest (Separation) Rules, 1951, R. 11-B(2)(ii), (2013) 14 SCC 590: (2014) 2 SCC (Civ) 801

11. ESTOPPEL/PROMISSORY ESTOPPEL

See 'Ownership and Title', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

See also EVIDENCE ACT, 1872, S. 115, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

12. EXECUTION

See CIVIL PROCEDURE CODE, 1908, Or. 21 Rr. 35, 97, 101 and 99 and S. 115, (2011) 15 SCC 377: (2014) 2 SCC (Civ) 490

13. FRAUDULENT/SHAM TRANSFERS

— Proof of *See* RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

14. GIFT

— Composite document having characteristics of both "will" and "gift" — Mode of giving effect to — Need of such document to be necessarily registered — Absence of said registration — Effect of *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— Distinguished from will — Tests to determine whether a document constitutes a "gift" or a "will" *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

15. HYPOTHECATION/PLEDGE/LIEN

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also GOVERNMENT CONTRACTS/TENDERS — 'Lien of employer over contractual amounts', (2014) 4 SCC 416: (2014) 2 SCC (Civ) 551

See also RESTITUTION — 'Contract Act, 1872', S. 72, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1

16. LEASE

See also TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— Renewal (not extension) — Registration — Requirement of *See* 'Transfer of Property Act, 1882', Ss. 105, 107, 106 and 116, (2014) 1 SCC 657: (2014) 1 SCC (Civ) 635

17. LIFE INTEREST

See 'Transfer of Property Act, 1882', Ss. 122 and 123, (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1

18. MESNE PROFITS/DAMAGES FOR WRONGFUL USE/TRESPASS

— Dispossession of landowners prior to issuance of preliminary notification under S. 4(1) of 1894 Act — Claim for rent/damages for land concerned from the date the possession thereof taken till the date of preliminary notification issued under LA Act, allowed *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4(1), 16 and 11, (2014) 13 SCC 613: (2014) 5 SCC (Civ) 735

19. MORTGAGE

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(4), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Right to redemption of mortgagor, held, is property protected under Art. 300-A of the Constitution *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

20. NEMO DAT QUOD NON HABET

See 'Transfer of Property Act, 1882', Ss. 7, 8 and 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 16 and 48, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665

— Statutory exception to in S. 65-A TPA *See* 'Transfer of Property Act, 1882', Ss. 65-A, 105, 109 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

21. NOTICE

— Burden of proof *See* 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776

— Equity's darling — Bona fide purchasers for value without notice — Who are *See* 'Transfer of Property Act, 1882', Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Notice of prior agreement to sell/contract for sale (CFS) — Modes of fastening — Public notices in local newspapers — Admission in subsequent sale deed acknowledging prior CFS *See* 'Transfer of Property Act, 1882', Ss. 3, 40 Paras 2 & 3 and S. 54, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

22. ORAL TRANSFERS

— Instances of — Mortgage by deposit of title deeds (MDTD) *See* 'Transfer of Property Act, 1882', Ss. 58(f), 59 and 9, (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1

23. OWNERSHIP AND TITLE

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 34 and 31, (2013) 15 SCC 161: (2014) 5 SCC (Civ) 180

— Absolute/Paramount owner — Rights of — Right to exclusive possession *See* CIVIL PROCEDURE CODE, 1908, Ss. 96, 10 and 11, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

See also CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, S. 39, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

— Acquisition of land — Challenge to — Locus standi *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 3(b), 9, 4 and 6, (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369

[836] — "Belonging to" — Meaning of — Taking over of ownership and not merely management — Necessity of — Merger of companies — Transfer of ownership of assets to final merged entity, held, takes place on date of merger (in present case brought about by statute) — *General Insurance Business (Nationalisation) Act, 1972, S. 16 — General Insurance (Emergency Provisions) Act, 1971*

The result of a conjoint reading of Section 1(3) and Section 2(*e*) of the 1971 Act defining public premises is that although the provisions with respect to eviction under the 1971 Act are deemed to have come into force from 16-9-1958, they will apply to the premises concerned only from the date when they become public premises. Thus, in the case of a company under the Companies Act, 1956 as in the present case, it is necessary that the premises must belong to or must be taken on lease by a company which has not less than 51% paid-up share capital held by the Central Government. (Paras 34 and 35)

In the present case only the management of IMIC was taken over by the Central Government w.e.f. 13-5-1971, and it was entrusted with the Cus-

todian appointed by the Central Government. It would definitely entail a right in the Custodian to take necessary steps to safeguard the property of IMIC. But it was a transitory arrangement. The properties of IMICs did not belong to the government companies or the Government at that stage. (Paras 38 to 42)

The term "belonging to" as occurring in the definition of "public premises" in Section 2(*e*) of the 1971 Act will have to be interpreted meaningfully to imply only the premises owned by or taken on lease by the government company at the relevant time. In the facts of this case the appellant had the status of a deemed tenant under Section 15-A of the Bombay Rent Act, 1947 prior to the premises concerned coming "to belong to a government company" and becoming public premises. If at all he had to be evicted, it was necessary to follow the due process of law which would mean the process as available under the Bombay Rent Act or its successor Maharashtra Rent Control Act, 1999, and not the one which is provided under the provisions of the Public Premises Act. (Para 43). *Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

— Competent court *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

— Corporate bodies — Ownership and transfer of property by *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

[837] — Entries in revenue records — Value of — Reiterated, do not confer any title — *Evidence Act, 1872, S. 35. Union of India* v. *Vasavi Coop. Housing Society Ltd.*, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66: AIR 2014 SC 937: (2014) 4 CTC 471: (2014) 3 Mah LJ 244: (2014) 2 MPLJ 486: (2014) 102 ALR 735: (2014) 134 AIC 10: (2014) 2 LW 862.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 7-1-2014]

[838] — Grant of patta — As such does not confer title — *Evidence Act, 1872, S. 35 — Transfer of Property Act, 1882, Ss. 105 and 107. Union of India* v. *Vasavi Coop. Housing Society Ltd.*, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66: AIR 2014 SC 937: (2014) 4 CTC 471: (2014) 3 Mah LJ 244: (2014) 2 MPLJ 486: (2014) 102 ALR 735: (2014) 134 AIC 10: (2014) 2 LW 862.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Dr A.K. Sikri*, JJ. [Date of decision: 7-1-2014]

[839] — Incidents of ownership of property — Held, the basic fundamental principle is that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded — *Transfer of Property Act, 1882, S. 3 — Constitution of India, Arts. 300-A, 14 and 265*

The basic fundamental principle is that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded. (Para 3)

Articles 243-W(*a*)(*i*) and (*ii*) read with Entry 17 of the Twelfth Schedule to the Constitution and clause (7)(*m*) of Section 358 of the 1961 Act and the general principle that nobody has a fundamental right to use the land belonging to another without the latter's permission or paying for it, if demanded, give ample powers to the Nagar Panchayat to impose parking fee for parking the vehicles in the bus-stand owned and maintained by it. Needless to say, if the Nagar Panchayat is demanding exorbitant or unreasonable parking fee without any quid pro quo, the same can always be challenged in accordance with law. No illegality is found in demand for the parking fee in using the bus-stand. Consequently, both the appeals are allowed. The judgments of the High Court are accordingly set aside and the resolution passed by the appellants imposing the bus-stand fee is upheld. (Paras 5, 6, 13, 14 and 15). *Nagar Panchayat, Kurwai* v. *Mahesh Kumar Singhal*, (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 6-9-2013]

— Liabilities of ownership — Occupier's liability *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

See also TORT LAW — 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Old grant — Proof of ownership *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

[840] — Proof of — Person not in possession claiming ownership — *Held, sanctity attached to proceeding of court cannot be diluted by relying upon bald averments contained in review petition — On facts held, if there was any grain of truth in averments made in review petition filed by appellant to the effect that it was only admitted that third parties in possession of the acquired land were tenants who were running factories therefrom, and not as admitted by her counsel that acquired lands had been transferred to third parties, and she was not in possession thereof, affidavit to substantiate same would have been filed at hearing of main petition — Failure to do so leads to inference that acquired*

lands were transferred to third parties and appellant was not in possession — CPC, 1908, Ss. 114 and 151 r/w Or. 47 R. 1 — Evidence Act, 1872, S. 110 (Paras 19 and 20). *Santosh Sharma* v. *Union of India*, (2013) 15 SCC 563: (2014) 5 SCC (Civ) 369.

Bench Strength **3**. Coram: *G.S. Singhvi, V. Gopala Gowda* and *Shiva Kirti Singh*, JJ. [Date of decision: 19-9-2013]

State of Maharashtra v. Ramdas Shrinivas Nayak, (1982) 2 SCC 463: 1982 SCC (Cri) 478, affirmed

— Property dispute — What is *See* CIVIL PROCEDURE CODE, 1908, S. 16, (2014) 11 SCC 619: (2014) 4 SCC (Civ) 206

[841] — Right to property — Extinguishment of, by estoppel — If possible — Claim to property based on fraud, by person other than the owner before certain authority — Objection raised against, by owner, before said authority — Subsequent withdrawal of — Effect of — Whether right of owner over that property extinguished due to withdrawal of said objection — *Respondent-Defendant 1 by committing fraud during consolidation proceedings getting her name recorded in revenue records in relation to appellant's half-share in ancestral property concerned — Objection raised thereagainst by appellant before Consolidation Officer, later withdrawn by appellant — Held, appellant's right over said property did not stand extinguished merely because of withdrawal of said objection by him — Evidence Act, 1872, S. 115* (Para 16). *Amar Nath* v. *Kewla Devi*, (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 22-4-2014]

— Suit for declaration of title and possession — Burden of proof in respect of — Lies on plaintiff, irrespective of whether defendants proved their case or not — Weakness of case set up by defendants cannot be a ground to grant relief to plaintiff *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 34 and 5, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

— Suit to recover possession based on title *See* CIVIL PROCEDURE CODE, 1908, Or. 7 R. 3 & Or. 20 R. 12 and Ss. 100, 35 & 35-B, (2014) 3 SCC 645: (2014) 2 SCC (Civ) 315

— Title — Proper forum for determination of *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— Title suit — Proper forum for *See* TENANCY AND LAND LAWS — 'Jurisdiction', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

— Title suit seeking consequential relief of injunction and suit for injunction alone — Differentiated *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38 and 35, (2014) 6 SCC 394: (2014) 3 SCC (Civ) 569

— Transfer of possession not essential for valid gift *See* 'Transfer of Property Act, 1882', Ss. 123, 122 and 129 (after its amendment in 1929), (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1

24. PARTITION ACT, 1893

[842] — S. 4 — Application under, for exercising right of pre-emption — Maintainability — Considerations — *Although brothers were living separately, there being no evidence that partition was effected vis-à-vis the suit property part of which was sold by one of the brothers to third party — Therefore, S. 4 application, held, is maintainable — S. 4, Partition Act is pari materia with S. 44, TP Act — The notions of coparcenary property of a Hindu joint family are wholly irrelevant in considering S. 44, TP Act and what is relevant for the purpose of such proceeding is whether the dwelling house belonged to an undivided family — Transfer of Property Act, 1882, S. 44*

Allowing the appeal,

Held :

The appellant's application under Section 4 of the Partition Act is maintainable. Although the evidence in the present appeal shows that two of the Pai brothers were residing elsewhere, there is no evidence to show that qua the suit property, the Pai brothers had separated or that there was any inter se partition effected vis-à-vis the suit property. In these circumstances, the application made by the appellant under Section 4 of the Partition Act was fully justified. (Paras 8 to 10)

Section 4, Partition Act is pari materia with Section 44, TP Act. The notions of the coparcener property of a Hindu joint family is wholly irrelevant in considering Section 44, TP Act and what is relevant for the purpose of such proceeding is whether the dwelling house belonged to an undivided family. (Para 7). *H. Vasudeva Pai* v. *Kamarunnisa*, (2011) 15 SCC 768: (2014) 2 SCC (Civ) 755.

Bench Strength **2**. Coram: *B.N. Srikrishna* and *L.S. Panta*, JJ. [Date of decision: 14-2-2006]

Sultan Begam v. Debi Prasad, ILR (1908) 30 All 324: 5 All LJ 352; Nil Kamal Bhattacharjya v. Kamakshya Charan Bhattacharjya, AIR 1928 Cal 539; Kshirode Chunder Ghoshal v. Saroda Prosad Mitra, (1910) 7 IC 436: (1910) 12 Cal LJ 525; Udayanath Sahu v. Ratnakar Bej, AIR 1967 Ori 139: 33 Cut LT 1163, approved

Mayne's Hindu Law and Usage, referred to

25. POSSESSION

See 'Transfer of Property Act, 1882', Ss. 55(1)(f) and 108(b), (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

— Ss. 105, 108(c), 109 & 111 and Ss. 7, 8 & 48, (2014) 6 SCC 1

See also CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief —

Non-speaking order/Dismissal in limine/Non-application of mind/Reasoned order — Need for, Art. 226, (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456

See also RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

— 'Sub-Letting/Sub-Tenant/Sub-Tenancy', (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

See also TENANCY AND LAND LAWS — 'Ceiling on Land' — Urban Land (Ceiling and Regulation) Act, 1976, Ss. 10(3) to (6) (Repealed in 1999), (2014) 12 SCC 523: (2014) 5 SCC (Civ) 130

[843] — Permissive or gratuitous possession — What is — *Possession without any right to possess, but with permission of owner is "permissive possession" — Permissive possessee is liable to be evicted forthwith on revocation of permission by owner — Specific Relief Act, 1963, S. 39 — Easements Act, 1882, Ss. 60, 61 and 63*

The property in question was initially owned by a Trust, managing a temple, which had given the suit land on lease to one *C*. However, *C* constructed superstructure thereupon with his own funds. *C* had one son *S* and one daughter *J*. *C* died much before the year 1956 and as per the Hindu law as to succession prevalent at that time, on his death the superstructure along with leasehold rights over the suit property vested in his son *S*. *S* had three daughters, namely, the two respondents and the appellant herein. *S* executed a settlement deed so as to transfer the superstructure along with the leasehold rights over the property in favour of his sister *J*. Subsequently, *J* purchased the suit property from the temple authorities. *J*, being an old widow and without any issue, permitted the two respondents herein (the daughters of *S*) to reside in the front portion of the suit property. Subsequent to moving into the suit property, the behaviour of the respondents changed and they began to interfere and quarrel with the tenants, apart from abusing *J*, as a result of which *J* was forced to move out and stay with the appellant herein (the third daughter of *S*). Finally, *J* vide a legal notice called upon the respondents to vacate the suit property. The respondents replied to that notice refuting the claim of *J*. Thereafter, *J* filed a suit seeking a mandatory injunction seeking eviction of the respondents from the suit property. The said suit was contested by the respondents on the ground that they had inherited 2/3rd of the suit property, being legal heirs of *S* and the so-called settlement deed executed by *S* in favour of his sister *J* was a sham document. During the pendency of the said suit, the respondents also filed a suit for partition before the same court stating that the suit property was ancestral property of their father *S* and as legal heirs of *S* they had one-third share each in that property and the remaining one-third share belonged to the appellant, being the third daughter of *S*.

The suit filed by *J* was decreed holding that the entire right in respect of the suit property devolved on *J* through the settlement deed and the subsequent sale deed and, thus, subsequent to revocation of permission granted by *J* to the respondents to stay on the suit property, the respondents were liable to vacate the suit property. On the other hand, the suit filed by the respondents was dismissed holding that since *J* was the absolute owner of the suit property, there was no question of partition of that property giving the respondents 2/3rd share therein.

Aggrieved by the dismissal of their suit, the respondents preferred an appeal before the High Court i.e. AS No. 1173 of 2004. They also challenged the judgment and decree passed in the suit filed by *J* in another appeal i.e. AS No. 1175 of 2004. During the pendency of the aforesaid appeals, *J* died. On the application of the respondents, the High Court impleaded the appellant herein as the sole legal heir of the deceased *J*. Both the said appeals were heard together. The appeal against the dismissal of the respondents' suit was dismissed. However, the other appeal against the decree passed in the suit filed by *J* was partly allowed. The said two appeals were decided by the same Judge in quick succession. In the second appeal which was allowed partly, the High Court held that there was no specific evidence to show that the property was given only as permissive occupation and the same had been revoked on a particular day and that since there was a dispute over the title, it was for the parties concerned to file an appropriate suit in relation thereto and in the event of succeeding in that suit only, the appellant herein would have a right to evict the respondents herein. Hence, the present appeal.

Allowing the appeal,

Held :

The admitted position which emerges on record is that the settlement deed executed by *S* in favour of his sister *J* is found to be genuine. The courts have rejected the challenge of the respondents to the said settlement deed. This finding has become final. Another finding which has attained finality is that *J* had subsequently purchased the leasehold property from the temple authorities and had become the absolute and exclusive owner of the suit property. There is thus no question of inheritance of this property by the respondents as daughters of *S*. Since *J* was found to be the absolute owner of the property, the possession of the part of this property with the respondents has to be permissive as rightly

found by the trial court. It is not the case of the respondents that they were inducted as tenants or in any other capacity which would confer upon them any right to stay therein. On the contrary, the case put up by them was that they were entitled to inherit one-third share each in the said property by virtue of succession which is found to be a baseless scheme. On these facts, the trial court was right in passing the decree of mandatory injunction in a suit which was filed by *J.* (Para 13). *Gowri* v. *Shanthi*, (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250: AIR 2014 SC 2863: (2014) 107 ALR 106.

Bench Strength 2. Coram: *S.S. Nijjar* and **Dr A.K. Sikri**, JJ. [Date of decision: 31-3-2014]

— **Suit for** *See* CIVIL PROCEDURE CODE, 1908, Or. 7 Rr. 8 & 7, Or. 6 R. 7 and S. 100, (2014) 11 SCC 316: (2014) 4 SCC (Civ) 103

— **Transfer of possession not essential for valid gift** *See* 'Transfer of Property Act, 1882', Ss. 123, 122 and 129 (after its amendment in 1929), (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1

26. POSSESSORY TITLE

— **Good against all but real owner** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38, 5 and 6, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669

27. SALE

See CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

28. SUCCESSION/HERITABILITY

See TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

29. TECHNICAL REQUIREMENTS

— **Registration — Transfer not required to be made in writing — Memorandum or writing executed in such cases — Requirement of registration — When arises — Memo analysis — Creative memo or evidentiary memo** *See* 'Transfer of Property Act, 1882', Ss. 59 and 58(f), (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1

30. TRANSFER OF PROPERTY ACT, 1882

— **S. 3** *See also* 'Ownership and Title', (2013) 12 SCC 342: (2014) 1 SCC (Civ) 308

[844] — Ss. 3, 40 Paras 2 & 3 and S. 54 — Notice of prior agreement to sell/contract for sale (CFS) — Modes of fastening — Public notices in local newspapers — Admission in subsequent sale deed acknowledging prior CFS — *Trusts Act, 1882, Ss. 91, 95 and 96 — Specific Relief Act, 1963, S. 19(b)*

The appellant-plaintiff was carrying on business prior to 1-1-1978 in the appurtenant land as a tenant. On 15-10-1977, the landlady (Respondent 1-Defendant 1) (R-1) entered into an agreement with him for the sale of the said land and two other premises belonging to her for a total consideration of a certain amount, part of which was paid as earnest money. The said agreement provided that the sale deed would be executed within six months from the date of agreement, or upon intimation by the vendor, as she had to obtain permission from the competent authority under Section 27, Urban Land (Ceiling and Regulation) Act, 1976 (the 1976 Act), the necessary income tax clearances and the sub-division permission from the municipal corporation. The said suit land was also in the possession of the landlady, and had partly been occupied by Defendant 2-respondent. Thereafter, the appellant-plaintiff paid non-agricultural assessment tax. He received a legal notice dated 18-6-1979 from R-1 stating that she had obtained the requisite statutory permissions from the authorities concerned.

However, R-1 tried to sell the suit property to some other persons. Therefore, the appellant-plaintiff got a public notice published in local newspapers on 29-4-1980 and 30-4-1980, in respect of the suit property, mentioning the existence of the said agreement to sell between the parties and warning that no other person must purchase the same. Even then, the GPA-holder of R-1 entered into two different agreements to sell with Respondent 2-Defendant 3 on 29-4-1980/30-4-1980, for a piece of open land.

The appellant-plaintiff filed a suit on 23-6-1983 for specific performance of the agreement to sell dated 15-10-1977 and for ignoring the agreement sell in favour of respondent/Defendants 3, 6 and 7.

During the pendency of the said suit, R-1 executed a sale deed, and got the same registered on 29-4-1985, in favour of Respondent 2-Defendant 3 with respect to the part of the suit property as specified. The GPA-holder registered another sale deed in favour of Respondent 2-Defendant 3 on 30-4-1985, with respect to part of the suit property. The trial court decreed the suit except for a small area, which had been purchased by Defendant 6 whom the trial court held to be bona fide purchaser for consideration without notice. The appellant-plaintiff was directed to deposit the balance consideration amount in the trial court within a period of four weeks, and the appellant-plaintiff duly deposited the same on 6-4-1991.

The High Court held, that the appellant-plaintiff was not ready and willing to perform his part of the contract, and therefore, there was no occasion to decide issues regarding the status of the subsequent

purchasers. However, the High Court added that the appellant-plaintiff would be entitled to get the sale deed executed in respect of the said land, excluding the land sold to Defendants 3, 6 and 7 at the rate of Rs 750 per square yard, adjusting the amount that had already been paid.

R-1 filed a review petition before the High Court. During the pendency of the said review petition, both the sides preferred the present appeals. The review petition filed by R-1 was later dismissed by an order. The said order was also challenged in the connected Appeals Nos. 2888 and 4459 of 2005.

Allowing the appeals, of the appellant-plaintiff and dismissing the connected appeals,

Held :

So far as the notice of the agreement between the appellant and R-1 i.e. the prior contract for sale (CFS) is concerned, the trial court after taking note of the recital of the said agreement in the subsequent agreement to sell and sale deed also, has held, that, so far as the land sold to the respondents other than Respondent 6, the parties had been fully aware of the same. Only Respondent 6 had no such notice. Thus, the appellant-plaintiff *S* the holder of the prior agreement to sell is entitled to get the sale deed executed and registered, with respect to all the suit land available now (minus the land acquired and the land purchased by Respondent 6). (Paras 24 and 26)

However, in the facts and circumstances of the case, as the appellant-plaintiff *S* has not yet acquired any title over the land, he has no right to receive compensation to the tune of Rs 29,47,112. However, he withdrew the said amount by giving an undertaking to return the said amount to the landlady in case any such order was passed by the court in that regard. The appellant is directed to refund the amount of compensation received by him to the landlady within a period of three months, along with 9% interest from the date of receipt till the date of payment. (Paras 25 and 27). *S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23: AIR 2013 SC Supp 265: (2013) 98 ALR 241: (2013) 125 AIC 25.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 10-4-2013]

Anjum Jehan v. K. Hanuman Goud, CCCA No. 34 of 1991, decided on 10-6-2003 (AP), reversed

— S. 3 Expln. II *See* S. 54

[845] — Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39 — Bona fide purchasers for value without notice — Presumption of notice — When does not arise — Role of registration — *Held, in absence of registration of agreement to sell/contract for sale, subsequent buyers do not get an opportunity to inspect agreement and there could not be any presumption that subsequent buyers knew about prior purchase — Since plaintiffs failed to produce registered documents, held, subsequent buyers are bona fide buyers for consideration — Registration Act, 1908, Ss. 17, 18 and 49 — Evidence Act, 1872, Ss. 114 Ill. (g) and 4 — Trusts Act, 1882, Ss. 91, 95, 96, 63 and 64 — Specific Relief Act, 1963, S. 19(b)*

According to Section 4(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the agreement executed between the plaintiffs and the developer, ought to have been registered with the Sub-Registrar. In absence of such a registered document, the plaintiffs would not get any right in respect of the flats, which they intended to purchase. Moreover, in absence of the registration, the subsequent buyers could not have got an opportunity to inspect the agreement and there could not be any presumption that the subsequent buyers knew about the agreement. (Para 20)

The letter of intent cannot be said to be an agreement to sell for the simple reason that according to the contents of the letter of intent, only upon payment of the entire purchase price, the developer and the plaintiffs were to enter into an agreement with regard to sale of the flats. This fact clearly denotes that no agreement to sell had been entered into between the plaintiffs and the developer and in absence of such agreements, there cannot be any right in favour of the plaintiffs with regard to specific performance of any contract. Thus, the High Court did not commit any error while coming to the conclusion that there was no binding contract or agreement in existence between the plaintiffs and the developer and therefore, the trial court could not have decreed the suit for specific performance. (Para 21)

As no averment was made by the plaintiffs in their plaints that the subsequent buyers were not bona fide purchasers for consideration, the subsequent buyers could not have adduced any evidence to show that they were bona fide purchasers for consideration. Had such a plea been raised by the plaintiffs in their pleadings, the subsequent buyers could have adduced necessary evidence to prove their cases. In such cases, normally the burden of proof would lie on the plaintiffs unless there is a registered document so as to raise a presumption that the subsequent buyers had knowledge with regard to the earlier transaction. Such a burden of proof was not discharged by the plaintiffs and therefore the subsequent buyers were bona fide

buyers for consideration. (Paras 22 and 23). *Hansa V. Gandhi* v. *Deep Shankar Roy*, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734: AIR 2013 SC 2873: (2013) 116 Cut LT 457.

Bench Strength 3. Coram: *R.M. Lodha*, **Anil R. Dave** and *Ranjan Gogoi*, JJ. [Date of decision: 18-4-2013]

Deep Shankar Roy v. Hansa V. Gandhi, First Appeal No. 492 of 2002, order dated 24-8-2005 (Bom), modified

[**Ed.**: It would seem that Section 4(1) of the 1963 Act makes contracts for sale/agreements to sell immovable property compulsorily registerable in the State of Maharashtra. In such a case, it would seem that not only would there be a presumption of notice on the part of subsequent transferees, but deemed notice of the compulsorily registerable and duly registered prior agreements to sell/contracts for sale (CFS) vide Section 3 Expln. I TPA, 1882.

Ordinarily, an agreement to sell/contract for sale (CFS) of immovable property is not compulsorily registerable since a CFS falls within Section 17(2)(v) of the Registration Act, 1908, since a CFS is a document not itself amounting to a conveyance but merely creates a right to obtain another document which will, when executed, amount to a conveyance. However, a number of States have made a CFS compulsorily registerable either by amending Section 54 TPA for that State (this is true for Uttar Pradesh), or by a separate statute, like in the present case, by the 1963 Act in Maharashtra.

Section 3, TPA, 1882 provides:

" '**a person is said to have notice**' of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property *is required by law to be and has been effected by a registered instrument*, any person acquiring such property or any part of, or share or interest in, such property *shall be deemed to have notice of such instrument as from the date of registration*...

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act. ... (emphasis supplied)"]

[846] — Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54 — Notice — Absence of notice — Necessary pleadings — Burden of proof — Presumption that arises in case of registration of voluntarily registerable instrument and deemed notice that arises in case of due registration compulsorily registerable instrument under S. 3 Expln. I, TPA — Present case being one where S. 4(1) of 1963 State Act required compulsory registration of contract for sale (CFS), but CFS was not registered — *Trusts Act, 1882, Ss. 91, 95, 96, 63 and 64 — Specific Relief Act, 1963, S. 19(b) — Evidence Act, 1872, Ss. 101 to 103 and 114 — CPC, 1908, Or. 6 Rr. 1 & 2 — Registration Act, 1908, Ss. 17, 18 and 49*

According to Section 4(1) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, the agreement executed between the plaintiffs and the developer, ought to have been registered with the Sub-Registrar. In absence of such a registered document, the plaintiffs would not get any right in respect of the flats, which they intended to purchase. Moreover, in absence of the registration, the subsequent buyers could not have got an opportunity to inspect the agreement and there could not be any presumption that the subsequent buyers knew about the agreement. (Para 20)

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776: (2014) 1 SCC (Civ) 734: AIR 2013 SC 2873: (2013) 116 Cut LT 457.

Bench Strength 3. Coram: *R.M. Lodha*, **Anil R. Dave** and *Ranjan Gogoi*, JJ. [Date of decision: 18-4-2013]

Deep Shankar Roy v. Hansa V. Gandhi, First Appeal No. 492 of 2002, order dated 24-8-2005 (Bom), modified

Ram Sarup Gupta v. Bishun Narain Inter College, (1987) 2 SCC 555, cited

[Ed.: It would seem that Section 4(1) of the 1963 Act makes contracts for sale/agreements to sell immovable property compulsorily registerable in the State of Maharashtra. In such a case, it would seem that not only would there be a presumption of notice on the part of subsequent transferees, but deemed notice of the compulsorily registerable and duly registered prior agreements to sell/contracts for sale (CFS) vide Section 3 Expln. I TPA, 1882.

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Section 3, TPA, 1882 provides:

" **'a person is said to have notice'** of a fact when he actually knows that fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property *is required by law to be and has been effected by a registered instrument*, any person acquiring such property or any part of, or share or interest in, such property *shall be deemed to have notice of such instrument as from the date of registration*?

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908 (XVI of 1908) and the rules made thereunder,

(2) the instrument of memorandum has been duly entered or filed, as the case may be, in books kept under Section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under Section 55 of that Act. ... (emphasis supplied)"]

— S. 5 *See* S. 122

See also FAMILY AND PERSONAL LAWS — 'Hindu Law' — Family arrangement/settlement, (2011) 15 SCC 417: (2014) 2 SCC (Civ) 605

— S. 5 Expln. *See* (2014) 8 SCC 661: (2014) 4 SCC (Civ) 602

— Ss. 6(f) & (g) *See* (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

— S. 7 *See* S. 65-A; S. 105; S. 122

See also TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

[847] — Ss. 7, 8 and 48 — Property — Essence of — Nemo dat quod non habet — Transactional exigibility i.e. binding effect of prior property rights over property rights of subsequent transferee(s) irrespective of notice or knowledge of prior property rights on part of subsequent transferee(s) — *Constitution of India, Art. 300-A*

A "secured asset" has been defined in Section 2(*zc*) of the SARFAESI Act to mean the property on which the security interest is created. In case of an immovable property, a security interest is created in a secured asset by way of a mortgage in favour of the secured creditor. There may be cases where before the mortgage is created in respect of an immovable property, the borrower had already leased out the immovable property in favour of a lessee either as the owner or as a person competent or authorised to transfer the immovable property in accordance with Section 7 of the Transfer of Property Act, 1882 (TPA). If such a lease is made, by virtue of Section 8 TPA, the lessee will have the right to enjoy the leased property in accordance with the terms and condition of the lease irrespective of whether a subsequent mortgagee of the immovable property has knowledge of such a lease or not. (Para 16)

The only section in the SARFAESI Act which confers a statutory right on the secured creditor to take possession of the secured asset and enforce the secured asset for the realisation of the secured debt is Section 13. Section 13(4) of the SARFAESI Act provides that in case the borrower fails to discharge his liability in full within sixty days from the date of notice provided in Section 13(2) of the SARFAESI Act, the secured creditor may take recourse to one or more of the measures mentioned therein to recover his secured debt. One of the measures mentioned in Section 13(4)(*a*) of the SARFAESI Act is to take possession of the secured assets of the borrower including the right to transfer by way of lease. Where, however, the lawful possession of the secured asset is not with the borrower, but with the lessee under a valid lease, the secured creditor cannot take over possession of the secured asset until the lawful possession of the lessee gets determined. There is, however, no mention in Section 13(4) of the SARFAESI Act that a lease made by the borrower in favour of a lessee will stand determined on the secured creditor deciding to take any of the measures mentioned in Section 13 of the SARFAESI Act. (Paras 19 to 21)

As per Sections 105 and 111 TPA, so long as a lease of an immovable property does not get determined, the lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided in Article 300-A of the Constitution. There is no provision in Section 13 of the SARFAESI Act that a lease in respect of a secured asset shall stand determined when the secured creditor decides to take the measures mentioned in Section 13 of the SARFAESI Act. Without the determination of a valid lease, the possession of the lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals. (Para 22)

Further, as per Section 14(1) of the SARFAESI Act, only if possession of the secured asset is required to be taken under the provisions of the SARFAESI Act, can the secured creditor move the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) for assistance to take possession of the secured asset. Section 13 of the SARFAESI Act does not provide that the lease in respect of a secured asset will get determined when the secured creditor decides to take the measures in Section 13 of the SARFAESI Act. Hence, possession of the secured asset from a lessee in lawful possession under a valid lease is not required to be taken under the provisions of the SARFAESI Act and the CMM or the DM, therefore, does not have any power under Section 14 of the SARFAESI Act to take possession of the secured asset from such a lessee and hand over the same to the secured creditor. (Para 25)

When, therefore, a secured creditor moves the CMM or the DM for assistance to take possession of the secured asset, he must state in the affidavit accompanying the application that the secured asset is not in possession of a lessee under a valid lease made prior to creation of the mortgage by the borrower or made in accordance with Section 65-A TPA prior to receipt of a notice under Section 13(2) of the SARFAESI Act by the borrower. (Para 25). *Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength 2. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— **Ss. 7 and 8** *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

— **Ss. 7, 8 and 54** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 16 and 48, (2014) 2 SCC 145: (2014) 1 SCC (Civ) 665

— **Ss. 7, 8 and 55(1)(g), 108(j), 105, 65-A, 109 & 111** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 5, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **Ss. 7, 8 and 122** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2012) 13 SCC 759: (2014) 5 SCC (Civ) 419

— **Ss. 7, 54 and 122** *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **S. 8** *See* S. 7; S. 65-A; S. 105

— **S. 9** *See also* S. 40 Paras 2; S. 58(f)

— **S. 9 — Transfer not required to be made in writing — Memorandum or writing executed in such cases — Requirement of registration — When arises — Memo analysis — Creative memo or evidentiary memo** *See* 'Transfer of Property Act, 1882', Ss. 59 and 58(f), (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1

— **Ss. 9, 54 and 122** *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **S. 10** *See also* S. 40 Paras 2

— **Ss. 10 and 11 — Statutory bars/limitations on alienation** *See* TENANCY AND LAND LAWS — 'Gujarat Tenancy and Agricultural Lands Act, 1948 (Bom Act 47 of 1948)', Ss. 43 and 63, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161

— **Ss. 10 to 12** *See* LOCAL GOVERNMENT — 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49

— **Ss. 10 and 54 — Statutory bars on alienation** *See* TENANCY AND LAND LAWS — 'Rajasthan Tenancy Act, 1955 (3 of 1955)', S. 42 proviso (as ins. by amending Act 27 of 1956), (2014) 8 SCC 282: (2014) 4 SCC (Civ) 306

— **Ss. 11 & 12** *See* S. 40 Paras 2

— **Ss. 38 to 40** *See* S. 3 "notice"

— **S. 40 Para 2** *See* S. 3; S. 40 Paras 2; S. 54

— **S. 40 Paras 2 and 3** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16(c), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

— **S. 40 Paras 2 and 3 — Plaintiff always ready and willing to perform his part of contract — Hence decree of specific performance granted by trial court and first appellate court to transferee under prior contract for sale (CFS) (appellant plaintiff) against subsequent transferee with notice of the prior CFS, confirmed** *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370

[848] — Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123 — Right of ownership over flat purchased by becoming shareholder (to the extent of value of flat) of a housing company, or, by becoming member (to the extent of value of flat) of a cooperative housing society — Nature of, and transferability/alienability of such right of ownership —

Restriction on transferability/alienability right of mortgage, sale or transfer of flat of such shareholder by articles of association of company or of such member by the bye-laws of housing society — Permissibility — *R-5 obtained a flat by becoming shareholder of appellant Housing Company — Thereafter R-5 created a mortgage by depositing the share certificate by virtue of which it was allotted said flat, with respondent Bank — Thereafter, respondent Bank secured an order of attachment of said flat from DRT as there was a default in repayment of loan obtained by creating the said mortgage on the said flat — Resisting said attachment order, appellant Housing Company contending that all rights, title and interest in respect of said flat remained exclusively vested in Company and R-5 only had right to use and occupy said flat and could not mortgage it without permission of Company — Bank argued that value in share of Housing Company is nothing but value of flat and it could be transferred for consideration and hence said property which was mortgaged, is liable to be attached — Held, multi-storeyed flats are being purchased by people either by becoming members of cooperative housing society or shareholders of housing company — Right of flat-owner over said flat is exclusively that of his which is transferable and heritable, though he is bound by bye-laws of society or articles of association of company being a member of either — Right or interest to occupy any such flat since becomes a species of property, held, flat-owner can sell, donate, leave by will or let out or hypothecate his right — Further held, such right can be taken away only by a statute — As articles of association of a company have no force of statute, right of R-5 to mortgage said flat cannot be restricted by articles of association of the company — Hence, held, no interference is warranted with order of attachment of said flat issued by DRT — Appellant is granted liberty to invoke its right of pre-emption conferred by the articles of association, but at not less than value of market value of said flat — Registration Act, 1908, Ss. 17(1)(b) & (c) and S. 49 & proviso thereto — Trusts Act, 1882, Ss. 91, 95, 96 and 58 — Specific Relief Act, 1963, S. 19(b)*

The right, title, interest over a flat conveyed is a species of property, whether that right has been accrued under the provisions of the articles of association of a company or through the bye-laws of a cooperative society. The people in this country, especially in urban cities and towns are now accustomed to the flat culture, especially due to paucity of land. Multi-storeyed flats are being constructed and sold by companies registered under the Companies Act as well as the cooperative societies registered under the Registration of Cooperative Societies Acts, etc. Flats are being purchased by people by either becoming members of the cooperative society or shareholders of the company and the flat-owners have an independent right as well as the collective right over the flat complex. A flat-owner's right to dispose of its flat is also well recognised, and one can sell, donate, leave by will or let out or hypothecate his right. These rights are even statutorily recognised by many State Legislatures by enacting Apartment Ownership Acts. Such a legislation exists in the State of Maharashtra as well. (Para 12)

Most of the flat-owners purchase the flat by availing of a loan from various banking institutions by mortgaging their rights over the purchased flat. By purchasing the flat, the purchaser, over and above his species of right over the flat, will also have undivided interest in the common areas and facilities, in the percentage as prescribed. Flat-owners will also have the right to use the common areas and facilities in accordance with the purpose for which they are intended. It is too late in the day to contend that flat-owners cannot sell, let, hypothecate or mortgage their flat for availing of loan without permission of the builder, society or the company. So far as a builder is concerned, the flat-owner should pay the price of the flat. So far as the society or company in which the flat-owner is a member, he is bound by the laws or articles of association of the company, but the species of his right over the flat is exclusively that of his. That right is always transferable and heritable. Of course, they will have charge over the flat if any amount is due to them upon the flat. (Para 13)

The right of transfer of land indisputably is incidental to the right of ownership and such a right can be curtailed or taken away only by reason of a statute. The articles of association of a company have no force of a statute and that the right of Respondent 5 to mortgage could not have been restricted by the articles of association. Neither the Companies Act nor any other statute makes any provision prohibiting the transfer of this species of interest to third parties or to avail of a loan for the flat-owner's benefit. A legal bar on the saleability or transferability of such a species of interest will create chaos and confusion. The right or interest to occupy any such flat is a species of property and hence has a stamp of transferability and consequently it is held that there is no error with the warrant of attachment issued by DRT on the flat in question. (Paras 15 and 16). *Hill Properties Ltd.* v. *Union Bank of India*, (2014) 1

SCC 635: (2014) 1 SCC (Civ) 513: (2014) 186 Comp Cas 284: (2014) 102 ALR 813.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 11-9-2013]

Ramesh Himmatlal Shah v. Harsukh Jadhavji Joshi, (1975) 2 SCC 105; DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622, followed

Hill Properties Ltd. v. Union Bank of India, Notice of Motion No. 2332 of 2007 in Suit No. 1627 of 2007, order dated 25-1-2012 (Bom); Hill Properties Ltd. v. Union Bank of India, Appeal (L) No. 185 of 2012, order dated 20-3-2012 (Bom), affirmed

Bacha F. Guzdar v. CIT, AIR 1955 SC 74: (1955) 1 SCR 876; Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613: (2012) 3 SCC (Civ) 867, impliedly distinguished

[**Ed.**: Normally when a person obtains a flat from a builder, it is by means of a proper registered conveyance: either a duly registered sale or lease. Hence, the flat-buyer acquires either paramount title or absolute ownership of the flat at law, or a lease or sub-lease of the flat at law, depending on what was transferred to the flat-owner in terms of the registered conveyance. All this is governed by S. 54 and S. 105 r/w S. 107 of the Transfer of Property Act, 1882 (TPA), r/w Ss. 17(1)(*b*) & (*c*) & 49 of the Registration Act, 1908 (RA). This position of law has recently been clearly re-enunciated and put beyond all doubt in the famous *Suraj Lamp case*, (2009) 7 SCC 363.

What makes the facts of this case particularly interesting is the fact that the purported transfer of the "species of interest" that the flat-owner acquires from the builder accrues "under the provisions of the articles of association of a company or through the bye-laws of a cooperative society...[by the purchasers] by either becoming members of the [builder] cooperative society or shareholders of the [builder] company" ("BLA Transfer" or "BLAT" for short; *see* paras 12, 13, 15 and 16 hereinbelow). A BLAT *in the absence of a registered conveyance*, it is humbly submitted is unknown to the law as a transfer of property at law. What the Hon'ble Supreme Court in the present judgment has held, following *Himmatlal Shah case*, (1975) 2 SCC 105 is that a BLAT does create a "species of property"/"species of interest" in the flat, which is freely transferable/alienable i.e. can be sold, gifted, bequeathed, inherited, mortgaged, etc. etc. This "species of property" includes both an independent right over the flat itself, and an undivided interest over the common areas and facilities (*see* paras 12, 13, 15 and 16 hereinbelow).

It is humbly submitted that until a BLAT is duly registered, this "species of property" does not fructify into a legal property entitlement, but subsists as an equitable estate in the flat and the unregistered BLAT is a transfer in equity vide a contract FOR conveyance (CFC) i.e. a contract for sale (CFS) or a contract for lease (CFL) as envisaged under S. 17(2)(*v*) r/w S. 49 proviso RA, as also envisaged in Ss. 54 and 53-A TPA or as an "obligation annexed to the ownership of property" (OAOP) as envisaged in S. 40 TPA.

Whether a BLAT requires compulsory registration can be examined either by assuming that (*i*) the proprietary interest in the flat that is being transferred ("flat-right" for short) is neither paramount/absolute title nor a lease; or by assuming that (*ii*) the "flat-right" that is being transferred is either paramount title or a lease. S. 9 TPA provides that "9. *Oral transfer.*— A transfer of property may be made without writing in every case in which a writing is not expressly required by law." If the "flat-right" is neither paramount/absolute title nor a lease or mortgage, nor acquired or transferred by sale, gift or exchange (see Ss. 54, 59, 107, 118 and 123, TPA), then nowhere does the law prescribe that the transfer of a "flat-right" must be made in writing.

But, can a BLAT be construed as an "oral transfer"? A BLAT (as explained in paras 12, 13, 15 and 16, hereinbelow) is effected either by the instrument of the articles of association of a company or the instrument of the bye-laws of a cooperative society. Thus, it seems difficult to see how it can be construed as an "oral transfer", since as recently reiterated in *State of Haryana* v. *Narvir Singh*, (2014) 1 SCC 105, a transfer cannot be construed as an oral transfer if accompanied by an instrument which *constitutes* the transfer i.e. the instrument in question contains the essential terms and conditions of the transfer. It is only when an instrument which accompanies an oral transfer is merely *cognitive* or *evidential* in nature i.e. only evidences the oral transaction without containing any terms and conditions thereof, that such instrument does not fall within the umbrage of Ss. 17(1)(*b*) or (*c*) RA. But it seems safe to assume that in a BLAT of a "flat-right", the instrument of the articles of association or the instrument of the bye-laws would contain the essential terms and conditions of the transfer: thus making it a *constitutive* instrument, thus making it compulsorily registrable in terms of S. 17(1)(*b*) or (*c*) RA. After all, in the facts of the present case, Respondent 5 was allotted Flat No. 23 vide Share Certificate No. 45. Thus, as per S. 49 RA, there can be no transfer of property at law by an unregistered BLAT. However, it is submitted that a BLAT of the "flat-right" which is compulsorily registrable can be saved as an equitable estate, even when *unregistered*, and a subsequent mortgage of such an equitable estate can further be saved as mortgage in equity, which itself would be an equitable estate.

Contrary to what is asserted in a number of standard textbooks on Property Law in India, the statutory scheme of Indian Property Law Statutes does seem to envisage a complete dual system of property law: of legal estates and legal proprietary transfers of legal estates when all prescribed technical requirements therefor are strictly met, and equitable estates and equitable proprietary transfers of legal or equitable estates when for bona fide reasons, prescribed technical requirements of a conveyance are not met or there is some other rectifiable defect or a proper conveyance is yet to be executed. It is humbly submitted that the Transfer of Property Act, 1882 cannot be considered in isolation as the sole source of Property Law in India. The scheme of dual estates, both legal and proprietary runs consistently through *all* the Property

Law statutes in India: the Transfer of Property Act, 1882 must be harmoniously construed with the Trusts Act, 1882, Specific Relief Act, 1877/1963, Easements Act, 1882, Registration Act, 1908 and Stamp Act, 1899 (which are the remaining Property Law statutes).

It is humbly submitted that the words "property" and "immovable property" in all the above six Property Law statutes have been used consistently and harmoniously to connote *legal* estates in property only. These words, *firstly*, do not connote *equitable* estates in property, and hence, *secondly* do not exclude the existence of equitable estates in property in Indian law. Equitable estates in these six statutes, when expressly referred to, have been referred to either as "beneficial interest" or as an "obligation annexed to the ownership of property" (OAOP) as defined in S. 3 of the Trusts Act, 1882 (TA); and when r/w S. 95 TA, they include the equitable estates under express trusts, resulting trusts and constructive trusts (the latter two as provided for in Ch. IX TA). Ss. 2(*c*) & (*d*) of the Specific Relief Act, 1963 (SRA) incorporate these definitions. S. 8 TA makes this dichotomy manifestly evident by providing that "the subject-matter of a trust must be *property* transferable to the beneficiary. It must not be merely a *beneficial interest* under a subsisting trust." (emphasis supplied)

It is submitted that a great deal of confusion has resulted from a misconstrual of the last sentence of S. 54 TPA, by construing it in isolation from other sections of TPA and from the abovereferred Property Law statutes. It is humbly submitted that the last sentence of S. 54, TPA only refers to the possibility of *legal* proprietary interests or charges over property *not* being created by a contract for sale (CFS). It does not in any way rule out the possibility of a CFS creating *equitable* proprietary interests or estates. In fact, S. 40 TPA r/w S. 91 TA r/w S. 19(*b*) SRA expressly envisage the creation of equitable estates by contracts FOR conveyance (CFCs)/CFSs, or by technically defective conveyances which can still be saved as CFCs as per S. 49 proviso RA, and the same would be rendered otiose if the last sentence of S. 54 TPA is construed to mean that not only does a CFS not of itself create legal proprietary interests or charges, but does not of itself create even equitable estates. By parity of reasoning, the words "property"/"immovable property" in Ss. 49 and 17(1)(*b*) & (*c*) RA connote *legal* estates in property, and not equitable estates in property.

The hallmark of a legal proprietary estate is that it binds the whole world or third persons without their notice, knowledge or consent. The hallmark of an equitable proprietary estate is that it binds the whole world or third persons except bona fide subsequent transferees for value without notice of the prior equitable estate (colourfully referred to as "equity's darlings").

As per S. 3 r/w Ss. 91/95 TA, the beneficial interest of a beneficiary or an OAOP under an express or constructive trust arises where the legal title is held by the express trustee or constructive trustee and the beneficiary of the trust, express or constructive, is entitled to the benefit of the OAOP which binds the trust property (the trust property must be a legal proprietary estate). The TPA in S. 40 TPA adopts the same formulation of OAOP as defined in S. 3 TA and provides that an OAOP/equitable estate/beneficial interest under a trust (express or constructive), is enforceable against the whole world except bona fide purchasers for value without notice of the OAOP/equitable estate. Ss. 63 to 69 and Ss. 95 & 96 TA provide for exactly the same result. S. 40 TPA inter alia provides that:

"where a... person is entitled to the benefit of an [OAOP/equitable estate], but *not amounting to an interest therein or easement therein* [i.e. in respect of immovable property] such [OAOP/equitable estate] may be enforced against a transferee with notice thereof ... but not against a transferee for consideration and without notice of the [OAOP/equitable estate]." (emphasis supplied)

Thus, most crucially, as per S. 40 TPA, an OAOP/equitable estate is *not* an "interest or estate therein [i.e. in immovable property]". Thus, it is submitted that the words in the last sentence of S. 54 TPA that a "[contract for sale (CFS)] does not, of itself, create any interest in or charge on such property" refer to the non-creation of *legal* proprietary interests or charges by a CFS and do not exclude the possibility of equitable estates or OAOPs being created by a CFS.

S. 91 TA further makes this position clear by providing that where a third person acquires property with notice that another person has entered into a prior contract for sale (CFS) or contract for conveyance (CFC) in respect of that property, then that third person holds the property on constructive trust for the prior CFS/CFC-holder. Again, as per S. 19(*b*) SRA the interest of the prior CFS/CFC-holder binds the whole world or third parties except equity's darlings. This is provided in Ss. 95 and 96 TA and in S. 19(b) itself of SRA. S. 53-A TPA provides that where a person who is a CFC-holder is put in possession and is ready and willing to perform his part of the CFC, then the CFC-holder acquires an equitable estate, notwithstanding the fact that a proper registered conveyance has not been executed, and the legal title holder or transferees thereof except equity's darlings "shall be debarred from enforcing against the [CFC-holder] and persons claiming under him any right in respect of the property of which the [CFC-holder] has taken or continued in possession". The proprietary nature of an equitable estate has been categorically affirmed by a three-Judge Bench of the Supreme Court in *Podar Cement case*, (1997) 5 SCC 482, which while affirming the rulings of a number of High Courts on this issue inter alia held that "*One of the most important of the powers of ownership is the right to exclude others from possession and the property right is essentially a guarantee of the exclusion of other persons from the use or handling of the thing. In that sense, therefore, the [equitable estate owner under S. 53-A, TPA] itself became the owner of the property in question.*" (emphasis supplied)

The owners of equitable estates under a CFC are entitled inter alia to claim specific performance of the CFC and obtain a full legal conveyance, and the right to maintain an action for an injunction against the whole

world if the equitable estate owner anticipates any likely breach of the equitable estate or OAOP, as provided under S. 38 SRA, especially under S. 38(3)(*a*) SRA which expressly envisages the possibility of an equitable owner maintaining an action for an injunction against the legal owner. Other remedies available to an equitable owner, whether under an express or constructive trust it would seem would be the right to recover possession of specific immovable property under S. 5 SRA if r/w Ss. 91, 95 and 56 TA. Ss. 55 to 67 r/w Ss. 91/95 TA provide for the remedies available to the owner of an equitable estate either under an express or constructive trust.

The proviso to S. 49 RA completes the statutory scheme relating to the possibility of equitable estates in Indian Property Law, by providing inter alia that

"an unregistered document affecting immovable property and required [to be compulsorily registered] may be received as evidence of a contract in a suit for specific performance ... or as evidence of any collateral transaction not required to be effected by a registered instrument".

Thus, S. 49 proviso RA r/w Ss. 40 and 53-A TPA r/w S. 91 TA r/w S. 19(*b*) SRA clearly envisage the availability of the equitable relief of specific performance to the holder of an equitable estate either under a contract for conveyance, or, where a conveyance has been executed but is defective, to perfect the equitable estate by obtaining a full conveyance of property at law by specific performance of the CFC or defective conveyance, either against the original transferor-holder of the legal proprietary title until he still holds it, or against any subsequent transferee of the legal title except bona fide transferees for value without notice of the prior CFC. *See especially* in this regard *Durga Prasad* v. *Deep Chand*, AIR 1954 SC 75, wherein most crucially a three-Judge Bench of the Supreme Court speaking through Vivian Bose, J., rejected the path of declaring the subsequent transfers void, revesting the property in the original transferor, and then directing specific performance of the prior contract for conveyance (CFC) against the *original* transferor under the said prior CFC. Had the Supreme Court adopted this path, it would have established that the interest under the prior CFC is really only personal in nature and not proprietary, since only a person who is a party to such CFC would be bound by it, and no third party is bound at all. However, quite to the contrary, it was laid down in *Durga Prasad case* that the decree would be enforced against third parties i.e. the subsequent transferees, who would be directed to convey the legal title to the holders of the equitable estate under the prior CFC. This position has been consistently followed by courts in India, including the Supreme Court in decreeing or confirming relief against the subsequent transferees of the legal title who had notice of the prior CFC, down the decades since *Durga Prasad case*. *See S. Kesari Hanuman Goud* v. *Anjum Jehan*, (2013) 12 SCC 64, *Thomson Press* v. *Nanak Builders*, (2013) 5 SCC 397 and *Jogendra Ram* v. *Phullan Mian*, (2011) 15 SCC 247, for extremely recent instances of this. This establishes the proprietary nature of equitable estates envisaged under Ss. 40 and 53-A TPA r/w S. 91 TA r/w S. 19(*b*) SRA since the same are enforceable against third parties/the whole world (the hallmark of proprietary character), except equity's darlings.

Very recently in *Lakshmi* v. *E. Jayaram*, (2013) 9 SCC 311, the transferee of an equitable estate, in fact a lessee in equity, was held to have the right to maintain an action for a perpetual injunction against the transferor/legal title holder of the property from interfering with the possession of such transferee of the equitable estate. *See also* the editorial note appended to *E. Jayaram case* for a detailed conspectus of Supreme Court decisions that hold that an equitable owner can maintain an action for an injunction against the legal title holder and third parties, and other decisions of the Supreme Court which seem to suggest that equitable estates do exist in Indian law.

Thus, the Indian statutory scheme and many Supreme Court decisions seem to recognise the existence of equitable estates in India. Thus, the "species of property" in respect of a flat recognised by the Supreme Court in the present case, it is humbly submitted, is nothing but an equitable estate as long as the BLAT is unregistered or there is no other registered conveyance, and the flat-owner in such a state of affairs would have available all the remedies available to an equitable estate owner such as the right to obtain specific performance against the builder company/society or their transferees for a conveyance of the full legal title, and also to maintain an action for injunction against the whole world for any breach or anticipated breach of their enjoyment of the flat. The flat-owner could also perfect his legal title by simply registering the share certificate or equivalent membership document from the cooperative society, if the instrument envisages a transfer of property in substance.

The transferability of a beneficial interest or equitable estate under an express trust is clearly provided for in S. 58 TA and r/w Ss. 91/95 thereof would apply equally to the equitable estate held under a constructive trust i.e. the equitable estates held under CFCs or defective conveyances saved as CFCs. S. 58 TA provides inter alia that the equitable estate owner "may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest". In the present case, the Supreme Court following *Qutab Enclave case*, (2003) 5 SCC 622, in para 15 hereinbelow has held that "the right of transfer of land indisputably is incidental to the right of ownership and such a right can be curtailed or taken away only by reason of a statute". There does not seem to be any statutory prohibition on the transfer of equitable interests, so it would seem that the same principle as to free transferability of property as stated in *Qutab Enclave case* would apply to equitable estates as it does to legal estates.

Furthermore, in *V. Pechimuthu* v. *Gowrammal*, (2001) 7 SCC 617 at p. 627, in para 19 it was held that "no logical distinction can be drawn between an agreement to repurchase and an ordinary agreement of purchase [a

CFS/CFC] just because the vendor happens to be the original purchaser and the purchaser happens to be the original vendor. The agreement remains an agreement for sale of immovable property and must be governed by the same provisions of law." Thus, in *Shyam Singh* v. *Daryao Singh*, (2003) 12 SCC 160, after construing S. 15(b) SRA and following *T.M. Balakrishna Mudaliar* v. *M. Satyanarayana Rao*, (1993) 2 SCC 740 and *Habiba Khatoon* v. *Ubaidul Huq*, (1997) 7 SCC 452 and the seminal decision of the Privy Council on this point in *Sakalaguna Nayudu* v. *Chinna Munuswami Nayakar*, (1928) 55 IA 243 which affirmed the ruling of Beaumont, C.J. in *Vishweshwar Narsabhatta Gaddada* v. *Durgappa Irappa Bhatkar*, AIR 1940 Bom 339, it was held in para 16 of *Daryao Singh case* that:

"unless the contents of the document in question and evidence in relation thereto are so clear to infer a prohibition against assignment or transfer, [the benefit of a contract FOR conveyance (CFC) i.e. an equitable estate (in that case the right of repurchase)] has to be held to be assignable or transferable and cannot be treated as personal to the contracting parties."

This establishes that the benefit under a CFC which is nothing but an equitable estate is assignable or transferable as long as the transfer is not prohibited by the contract itself. *See* the detailed conspectus of the law on this point in paras 9 to 17 of *Daryao Singh case*. See also *Khiria Devi* v. *Rameshwar Sao*, 1992 Supp (2) SCC 1 and *Prabir Kumar Das* v *Amulya Bhushan Paul*, AIR 2005 Gau 128, which lay down exactly the same law. Furthermore, in *Lakshmi* v. *E. Jayaram*, (2013) 9 SCC 311, discussed above, the Supreme Court has upheld the right of a *transferee* of an equitable estate, a lessee in equity, to maintain an action for a perpetual injunction against the legal owner. Thus, it would seem that there is no impediment to the free transferability of equitable estates, like legal estates.

The remaining question would be whether the transfer of an equitable estate needs to be compulsorily registered i.e. would it fall within the umbrage of Ss. 17(1)(*b*) or (*c*) RA. The answer to this question would turn on the scope of the words "right, title or interest... to or in immovable property" in Ss. 17(1)(*b*) or (*c*) RA. Do they connote only *legal* rights, titles or interests in immovable property or also connote *equitable* rights, titles or interest in immovable property? It is humbly submitted that with the parity of reasoning adopted for concluding that the last line of S. 54 TPA when harmoniously construed with S. 40 Paras 2 & 3/S. 53-A TPA r/w Ss. 3, 8, 91 & 95 TA (*see above* at SCC p. 638*f* to 639*g*) connotes only *legal* interests or charges in immovable property and does not prohibit the creation of *equitable* estates by a contract for sale, the scope of Ss. 17(1)(*b*) and (*c*) RA is similarly restricted to the compulsory registration of only *legal* estates in property. This is further the case since Ss. 17(1)(*b*) and (*c*) RA bring within their umbrage not only the transfer of property rights, but also the creation or declaration, etc. of any property right.

If the creation of all equitable property rights were to be made compulsorily registrable it would render otiose the entire scheme of S. 40 TPA r/w S. 91 TA r/w S. 19(*b*) SRA, since then not even the *partial* proprietary protection provided by equitable estates ("*partial*" since third party bona fide purchasers for valuable consideration are never bound by equitable estates) would be available in situations where transactions are not technically perfect or technically complete for completely bona fide reasons. It would then be hard to see the juridical basis for decreeing specific performance of a contract against a party who is not a party to it, as done in *Durga Prasad case* and all the cases since (*see* SCC p. 640*g* to 641*c*, *above*).

The main function of law as Hart analysed it in *The Concept of Law* is to guide and enable human conduct and not to squelch and restrict it. Equity mitigates the rigours of the black letter law since equity inter alia looks upon as done that which ought to have been done, so long as the protection granted by equity does not violate the express provisions of a statute or undermine the statutory regime. The whole reason for having a regime of equitable estates under the above statutory provisions, it is humbly submitted, is to provide for *partial proprietary protection to persons conducting their affairs erroneously or in stages but who were acting in good faith*. The statutory scheme of registration is adequately protected, and the benefit of *full* legal proprietary protection carefully reserved only for technically perfect transactions, since in *every* case that an equitable owner seeks a remedy he must face a court of equity, either the court of specific performance to perfect the contract for conveyance at law or the court of injunction to protect any breach of its equitable ownership rights. *In either case, both the relief of specific performance and the relief of injunction are discretionary and the court of equity has the unfettered discretion to refuse to grant either relief if the court is satisfied that the equitable owner is seeking to defeat the regime of registration for any reason, and cannot clearly establish its bona fides.* Ss. 10, 20, 38 and 39 SRA expressly reserve such discretion with the court. Furthermore, in any situation where stamp duty is payable and is due, even on a contract for conveyance, a court can simply refuse to admit the CFC in evidence until the entire stamp duty, with the penalty has been paid: *vide* S. 35 of the Stamp Act, 1899; *see Omprakash* v. *Laxminarayan*, (2014) 1 SCC 618 for an extremely recent case on this issue. Hence, there is an adequate safeguard even against stamp duty evasion, before a court grants any relief to an equitable owner.

Thus, in the carefully devised statutory scheme of Property Law in India, when *all* the above six Property Law statutes are harmoniously construed, the equitable owner can never get any relief from a court unless it can fully establish its bona fides. This is a huge safeguard against the abuse of equitable ownership. After all, he who seeks equity must do equity. Lastly, one may rely on the very reasons cited by the Supreme Court in the present case in para 16 hereinbelow, and in *Himmatlal Shah case* (as extracted in para 14 hereinbelow) upon which it has relied to protect the rights of the flat-owners under unregistered BLATs:

"A legal bar on the saleability or transferability of such a species of interest will create chaos and confusion. The right or interest to occupy any such flat is a species of property and hence has a stamp of transferability."

Thus, what Respondent 5 obtained upon obtaining Share Certificate No. 45 was an equitable estate in respect of Flat No. 23 which is a "species of property". This was obtained vide an unregistered contract for conveyance (CFC) in the form of the articles of association/share certificate i.e. the BLAT. What Respondent 5 further transferred by depositing the "title deeds" of its equitable estate would be a mortgage by deposit of title deeds (MDTD) *in equity* (since the estate being pledged/encumbered is an equitable estate), which would again be valid given that an equitable estate is transferable. S. 69 TA, which would apply both to equitable estates under an express trust and constructive trust (vide Ss. 91/95 TA), and is the logical equivalent of Ss. 7 and 8, TPA which embody the *nemo dat quod non habet* doctrine, provides that: "Every person to whom [an equitable estate owner] transfers his interest has the rights, and is subject to the liabilities, of the [transferor equitable estate owner] in respect of such interest at the date of the transfer."

Lastly, the question whether an equitable estate created vide an allotment letter before a registered conveyance is executed, can be mortgaged is the subject-matter of a reference to a larger Bench vide *Syndicate Bank* v. *Estate Officer & Manager, APIIC Ltd.*, (2007) 8 SCC 361. The present case would seem to suggest that since equitable estates are transferable, mortgages *in equity* of such *equitable* estates should be permissible, as the partial protection of equitable estates is available while parties transact bona fide, in stages. Hence, it would seem that much like a BLA Transfer a mere allotment letter would create an equitable estate which could be mortgaged in equity, as held in the present case.]

— S. 40 Paras 2 & 3 and S. 54 *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— S. 40 Para 3 *See* S. 3; S. 40 Paras 2

— Ss. 41 & 43 *See* S. 3 "notice"

— S. 44 *See* 'Partition Act, 1893', S. 4, (2011) 15 SCC 768: (2014) 2 SCC (Civ) 755

— S. 48 *See* S. 7; S. 54; S. 65-A; S. 105

— S. 52 *See also* S. 3 "notice"

— Ss. 52 and 54 *See also* CIVIL PROCEDURE CODE, 1908, S. 100, (2013) 14 SCC 689: (2014) 3 SCC (Civ) 512

[849] — Ss. 52 and 54 — Alienation of property during operation of interim order restraining alienation — Legality of

The respondent-plaintiff filed a suit for declaration that he was owner of suit property by virtue of the sale deed executed in his favour by *B*. But his title became doubtful by judgment and decree passed in Title Suit No. 13/1977 filed by predecessor of the appellant-defendants. In that suit it was mainly contested that the sale deed executed in favour of the respondent-plaintiff was in contravention of the temporary injunction passed in another civil suit bearing No. 49/1970. The trial court dismissed the suit of the respondent-plaintiff whereas the lower appellate court opined that as the plaint in suit No. 49 of 1970 was returned for presentation before proper court, the injunction order did not survive. Hence the sale deed cannot be castigated. Thus, it decreed the suit of the respondent-plaintiff. In second appeal, the High Court dismissed the appeal holding that no substantial questions of law arose for consideration. Hence, the present appeal.

Allowing the appeal,

Held :

A suit is deemed to have been filed on the date of presentation of plaint before the competent court but the same did not have any bearing on the question relating to legality of sale deed dated 9-11-1973 executed by *B* during the currency of an order of injunction passed by the Munsif on 6-5-1971. It was not in dispute that as on 9-11-1973 i.e. the date on which the sale deed was executed, the order of injunction passed by the trial court in Suit No. 49 of 1970 was operative. It was also not in dispute that the order of injunction remained effective till 1976 when the plaint had been returned for presentation before the competent court. In other words, till the refiling of the plaint, the order of injunction passed by the Munsif in Suit No. 49 of 1970 restraining the defendants from alienating the suit property was in force and *B* could not have executed the sale deed in favour of the respondent-plaintiffs herein. (Para 9)

In each of the cases enumerated under Section 23 of the Contract Act, 1872, the consideration or object of an agreement is unlawful and every agreement executed with such an object or consideration which is unlawful is void. Since the sale deed was executed in favour of Respondent-Plaintiff 1 in the teeth of the order of injunction passed by the trial court, the same appears to be unlawful. (Para 13)

It must be held that one of the questions of law raised in the second appeal filed by the appellant-defendants was a substantial question of law within the meaning of Section 100(1) CPC and the Single Judge committed serious error by summarily dismissing the second appeal. (Para 12). *Jehal Tanti* v. *Nageshwar Singh*, (2013) 14 SCC 689: (2014) 3 SCC (Civ) 512: AIR 2013 SC 2235: (2013) 100 ALR 842: (2013) 3 Cal LJ 66.

Bench Strength **2**. Coram: **G.S. Singhvi** and *S.A. Bobde*, JJ. [Date of decision: 18-4-2013]

Amar Chand Inani v. Union of India, (1973) 1 SCC 115, distinguished

Pariya Devi v. Godavari Devi, Second Appeal No. 50 of 2001, order dated 16-5-2007 (Pat), reversed

— S. 53-A *See* S. 40 Paras 2; S. 54

— S. 54 *See* S. 3 "notice"; S. 40 Paras 2; S. 52; S. 118; S. 122; S. 126

See also LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4 and 6, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496

— Ss. 54, 53 and 109 — Sale of reversion by landlord if a "sham" *See* RENT CONTROL AND EVICTION — 'Bona Fide Requirement of Landlord', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

[850] — Ss. 54, 53-A, S. 3 Expln. II, Ss. 48 and 40 Para 2 — Unregistered sale deeds — Priority between buyers under — Interest, if any created by unregistered sale deed — Priority of buyer under prior unregistered sale deed of which latter buyer had notice — Effect of possession having been given to buyer under first unregistered sale deed, and, of second unregistered sale deed having been terminated — *Trusts Act, 1882, Ss. 91, 95 and 3 — Specific Relief Act, 1963, S. 19(b) — Registration Act, 1908, Ss. 47 to 50*

An unregistered agreement was signed by one *E* on 25-7-1973 to sell the suit land in favour of *S*, and the execution of this agreement was to be completed within a period of two years. Subsequently, *S* assigned his rights in favour of *K* vide agreement dated 7-8-1975. Thereafter, *K* also assigned its rights in favour of *V*, the vendor of Respondent 1, *P*. Vide a third agreement dated 21-9-1975. *V* was ultimately put in possession of the suit land, and thereafter had remained in possession till the present proceedings, for almost 30 years. All these agreements admittedly were unregistered agreements.

A fresh development agreement was executed much later in favour of the petitioner herein by Defendants 1 to 8 (successors-in-interest/co-sharers of *E*) on 30-12-2005 for the suit land for a consideration of Rs one crore in favour of the petitioner plaintiff, *R*. Of this amount, Rs 15 lakh was payable by the petitioner by way of earnest money at the time of execution of the agreement, whereas the balance was payable to the owners after making out a clear and marketable title as and when the petitioner/developer obtained intimation of commencement certificate. The document was adjudicated upon by the Collector of Stamps on 21-12-2005 to have a value of Rs 21.25 crores. The agreement that was entered into between the petitioner with Defendants 1 to 8/respondents herein (successors-in-interest/co-sharers of *E*) required the owner to make out a marketable title to the property free from encumbrances and was not subject to lis pendens or attachment. On the same date i.e. 30-12-2005, a supplementary agreement was further executed between the plaintiff *R* and Defendants 5 to 8 stating (*i*) that the developer plaintiff had inspected the premises and had made all necessary enquiries (Clause 1); (*ii*) the petitioner plaintiff had accepted the title of the co-owners and shall not raise any question on the title or call upon the co-owners to make out a marketable title [Clauses (*i*) and (*iii*); the co-owners had agreed to assign the development rights on as-is-where-is basis (Clause 2)]. The supplementary agreement according to the plaintiff was entered into as Defendants 5 to 8 had insisted upon such an agreement.

On 21-1-2006, a notice was published in the *Free Press Journal* on behalf of the petitioner plaintiff recording that Defendants 1 to 8 had entered into an agreement allowing the petitioner plaintiff to develop the property. This was responded to on 23-1-2006 by the advocate for *V* stating that *V* had already entered into agreement of sale with *E* through the intermediaries — *S* and *K* and this was reflected even in the will which was executed by the deceased *E* which was duly probated as a consequence of which *V* had been in possession of the suit land for more than 30 years and hence the petitioner had no right to purchase this land through any heir or co-sharer of *E* as the interest had been created in *V*.

The petitioner *R* did not take any step in pursuance of the agreement for development of the property and hence the original owners of the property/Defendants 5 to 8 terminated the agreement executed in favour of the petitioner on 2-4-2007.

After the termination of the agreement between the petitioner *R* and Defendants 5 to 8, the Defendant 9, *V* entered into a development agreement in respect of the suit land with Respondent 1 herein *P*. In a suit filed by the petitioner *R*, the trial Judge had granted an injunction restraining Respondent 1, *P* inter alia from carrying out further development of the property. This injunction had been vacated by the impugned order. The petitioner was before the Supreme Court thereagainst.

Dismissing the SLPs,

Held :

Respondent 1, *P* is claiming through *V* in whose favour the erstwhile owner *E* had executed the agreement of sale in pursuance of which possession was also delivered 30 years ago. The petitioner *R* on the other hand having entered into an agreement of sale 30 years later from some of the co-sharers

successors-in-interest of *E*, which agreement too was terminated on 2-4-2007 obviously cannot be granted an order of injunction restraining Respondent 1 from claiming the property through *V* which prima facie not only has got interest in the property but also actual physical possession of the same. On the contrary, the petitioner as of now has neither any semblance of title nor has possession on the property nor prima facie case nor balance of convenience in his favour as he is yet to take possession and develop the property. (Para 13). *Ramesh Vajabhai Rabari* v. *Pratiksha Real Estate (P) Ltd.*, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80.

Bench Strength 2. Coram: **Gyan Sudha Misra** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

Pratiksha Real Estate (P) Ltd. v. Ramesh Vajabhai Rabari, Appeal No. 683 of 2012, decided on 18-6-2013 (Bom), affirmed

Ramesh Vajabhai Rabari v. Betram Peter D'Mello, Notice of Motion No. 1673 of 2007 in Suit No. 1280 of 2007, decided on 29-6-2012 (Bom), reversed

— Ss. 54 and 40 Paras 2 and 3 — Contract for sale — When compulsorily registerable *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

[851] — Ss. 54 and 55(1)(g) & (2) and Ss. 65(c), 76(c) & 108(g) — Sale free from all encumbrances but expressly made subject to all statutory liabilities "arising out of the land" or "arising out of the plant and machinery" — Scope of such statutory liabilities — Excise duty payable by vendor/seller, held, not included — *The effect of the above stated clauses is that it is only that statutory liability which arises out of the land and building or* out of *plant and machinery which is to be discharged by the purchaser — Excise dues are not statutory liabilities which arise out of the land and building or the plant and machinery — Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property, etc. — Likewise, statutory liability arising out of the plant and machinery could be the sales tax, etc. payable on the said machinery — State Financial Corporations Act, 1951, S. 29*

Not only in the public notice but there was a specific clause inserted in the sale deed/agreement as well, to the effect that the properties in question are being sold free from all encumbrances. At the same time, there is also a stipulation that "all these statutory liabilities arising out of the land shall be borne by the purchaser in the sale deed" and "all these statutory liabilities arising out of the said properties shall be borne by the vendee and the vendor shall not be held responsible in the agreement of sale". As per the High Court, these statutory liabilities would include excise dues payable by the vendor. The High Court has missed the true intent and purport of this clause. The expressions in the sale deed as well as in the agreement for purchase of plant and machinery talk of statutory liabilities "arising out of the land" or statutory liabilities "arising out of the said properties" (i.e. the machinery). Thus, it is only that statutory liability which arises out of the land and building or out of plant and machinery which is to be discharged by the purchaser. Excise dues are not the statutory liabilities which arise out of the land and building or the plant and machinery. Statutory liabilities arising out of the land and building could be in the form of the property tax or other types of cess relating to property, etc. Likewise, statutory liability arising out of the plant and machinery could be the sales tax, etc. payable on the said machinery. As far as dues of the Central Excise are concerned, they were not related to the said plant and machinery or the land and building and thus did not arise out of those properties. Dues of the Excise Department became payable on the manufacturing of excisable items by the erstwhile owner, therefore, these statutory dues are in respect of those items produced and not the plant and machinery which was used for the purposes of manufacture. This fine distinction is not taken note of at all by the High Court. (Para 23). *Rana Girders Ltd.* v. *Union of India*, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130: AIR 2013 SC 3422: (2013) 295 ELT 12.

Bench Strength 2. Coram: *Anil R. Dave* and **A.K. Sikri**, JJ. [Date of decision: 16-8-2013]

Rana Girders Ltd. v. Union of India, Writ Tax No. 383 of 2005, order dated 25-11-2011 (All), reversed

— Ss. 54, 69 and 69-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 54 and 105 — Sale or lease *See* STAMP ACT, 1899, Ss. 47-A(2) (as applicable to Uttarakhand) and 2(10) & (16), (2014) 13 SCC 774: (2014) 5 SCC (Civ) 798

— Ss. 55(1)(a) & (g), 69 and 69-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8(6) proviso and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[852] — Ss. 55(1)(f) and 108(b) — Transferor's obligation after delivery of possession — R-6 taking possession of allotted house from transferor R-4 Development Authority — R-6 subsequently alleging dispossession by third party — *Transferor R-4 (Development Authority), held, cannot be given any direction in this regard — R-6, therefore, directed to file a suit or take recourse to remedies available under law — Spe-*

cific Relief Act, 1963, Ss. 5 and 6 (Paras 5 and 1). *Bachchu Singh* v. *State of U.P.*, (2011) 15 SCC 446: (2014) 2 SCC (Civ) 456.

Bench Strength **2**. Coram: *R.V. Raveendran* and *A.K. Patnaik*, JJ. [Date of decision: 3-1-2011]

— **S. 55(1)(g)** *See* S. 54
— **S. 55(2)** *See* S. 54
— **S. 58** *See* S. 62; S. 105
— **S. 58(a)** *See* S. 40 Paras 2
— **S. 58(f)** *See also* S. 40 Paras 2; S. 59

[853] — Ss. 58(f) and 59 — Mortgage by deposit of title deeds (MDTD) — Valid creation of — Requirement that title deeds be deposited with creditor in any of the towns specified in S. 58(f) or town notified by State Government — Critical nature of such requirement for MDTD to be valid — *Towns where title deeds were deposited in present case, if notified towns — Question not determined by High Court — Said issue going to root of the matter, hence matter remitted to High Court for determination afresh* (Paras 16 to 18). *State of Haryana* v. *Narvir Singh*, (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1: AIR 2014 SC 339: (2013) 6 CTC 234: (2013) 4 KLT 207: (2013) 101 ALR 205: (2013) 131 AIC 40: (2014) 1 LW 97.

Bench Strength **2**. Coram: **C.K. Prasad** and *Kurian Joseph*, JJ. [Date of decision: 7-10-2013]

[854] — Ss. 58(f), 59 and 9 — Mortgage by deposit of title deeds (MDTD) — How to be effected — Reducing transaction into writing/deed/memorandum/instrument — Not required — *Held, when debtor deposits with creditor title deeds of the property in a notified town for the purpose of security, it becomes a mortgage by deposit of title deeds — No instrument is required to be drawn for mortgage by deposit of title deeds — Delivery of documents of title to immovable property in a notified town with the intent to create a security thereon is sufficient*

The original title deeds in respect of scheduled land were deposited with Punjab National Bank by the borrower as security in lieu of a term loan to M/s Ultra Tech Private Limited Company by the Bank. In this way a mortgage by deposit of title deeds (MDTD) took place. The Bank requested the Tahsildar for mutation of a charge on the basis of the MDTD. When nothing was done, the landowner filed a writ petition before the High Court praying for mutation on the basis of the aforesaid mortgage. The authorities resisted the mutation inter alia on the ground that no entry can be made as the instrument of deposit of title deeds is compulsorily registrable under Section 17(1)(*c*) of the Registration Act. According to the authorities, in the absence of registration and payment of the registration fee and stamp duty, the prayer for mutation cannot be allowed. The High Court considered the objection and negatived the same. The authorities were in appeal thereagainst.

Dismissing the appeal,

Held :

A mortgage inter alia means transfer of interest in the specific immovable property for the purpose of securing the money advanced by way of loan. Section 17(1)(*c*) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. A mortgage by deposit of title deeds in terms of Section 58(*f*) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the face of it, when the debtor deposits with the creditor title deeds of the property for the purpose of security, it becomes a mortgage in terms of Section 58(*f*) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is the handing over, by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute a security, enabling the creditor to recover the money lent. After the deposit of the title deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing the terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(*c*) of the Registration Act, but in a case in which such a document does not incorporate any term(s) or condition(s), it is merely evidential and does not require registration. (Paras 11 to 13)

A mortgage by deposit of title deeds may be effected in a specified town by the debtor delivering to his creditor documents of title to immovable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only evidencing the deposit of the title deeds. In such a case also registration is

not required. But in a case in which the memorandum recorded in writing creates rights, liabilities or extinguishes those, the same requires registration. Nothing has been brought on record in the present case to show the existence of any instrument which has created or extinguished any right or liability in respect of the MDTD. In the case in hand, the original deeds have just been deposited with the Bank. In the face of it, the charge of mortgage can be entered into the revenue record in respect of mortgage by deposit of the title deeds and for that, an instrument of mortgage is not necessary. A mortgage by deposit of the title deeds further does not require registration. Hence, the question of payment of registration fee and stamp duty does not arise. (Paras 14.1 to 14.5). *State of Haryana* v. *Narvir Singh*, (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1: AIR 2014 SC 339: (2013) 6 CTC 234: (2013) 4 KLT 207: (2013) 101 ALR 205: (2013) 131 AIC 40: (2014) 1 LW 97.

Bench Strength **2**. Coram: **C.K. Prasad** and *Kurian Joseph*, JJ. [Date of decision: 7-10-2013]

Rachpal Mahraj v. Bhagwandas Daruka, AIR 1950 SC 272; United Bank of India Ltd. v. Lekharam Sonaram & Co., AIR 1965 SC 1591, followed

[**Ed.**: Though there is a letter of the Finance Commissioner which inter alia makes "the instrument of deposit of title deeds compulsorily registrable under Section 17(1)(*c*) of the Registration Act" in the area concerned, the principle of law which has been reiterated in the present case, following *Rachpal Mahraj* v. *Bhagwandas Daruka*, AIR 1950 SC 272 and *United Bank of India Ltd.* v. *Lekharam Sonaram & Co.*, AIR 1965 SC 1591, that an MDTD instrument is compulsorily registrable only when the instrument is constitutive of the transaction, is a general principle of law, and would be applicable even without an executive direction such as the abovesaid letter of the Finance Commissioner. This general proposition of law follows from the very language of Section 17(1)(*c*) of the Registration Act, 1908 read with Sections 9, 58(*f*) and 59 of the Transfer of Property Act, 1882. The same is also evident from the extracts from *Bhagwandas* and *Lekharam* set out in the learned judgment, and so also the learned conclusions of this Hon'ble Bench in paras 11 and 14.5 of the judgment, which are completely unqualified conclusions of law.]

— **S. 59** *See also* S. 40 Paras 2; S. 58(f)

[855] — Ss. 59 and 58(f) — Mortgage by deposit of title deeds (MDTD) — Requirement of registration — When arises — Memorandum or instrument in relation to MDTD — Memo analysis — Constitutive/creative of MDTD or merely cognitive/evidencing the MDTD — Determination of — *Held, ordinarily MDTD is not registerable if title deeds of the pledged interest are deposited in notified town in view of S. 59 that provides exception in respect of MDTD as far as registration thereof is concerned — No instrument is required to be drawn for a valid MDTD — Thus, even if a simple (cognitive) memorandum is prepared to evidence handing over of deposit of title deeds by borrower to creditor, it does not require registration — However, if the memorandum/instrument in question is constitutive of the transaction i.e. the memo creates rights and liabilities or extinguishes them with regard to the MDTD, then, held, registration of such constitutive memorandum/instrument is compulsory — Request of Bank for mutation of schedule property in revenue records in view of mortgage of said property effected by deposit of title deeds in lieu of a term loan, rejected on ground that without registration and payment of stamp duty, "charge" of mortgage cannot be entered in revenue record — Sustainability — Held, document merely recording/evidencing a transaction of mortgage by depositing of title deeds which is already concluded and that did not create any rights and liabilities, is not required to be registered — In instant case, except depositing original deeds with the Bank, no instrument was in existence creating or extinguishing rights and liabilities of parties — Since such transaction does not require registration, question of payment of registration fee and stamp duty does not arise — Hence, High Court rightly directed authorities concerned to enter said charge in revenue records — Registration Act, 1908, Ss. 17(1)(c) & (b) — Transfer of Property Act, 1882, S. 9*

The original title deeds in respect of scheduled land were deposited with Punjab National Bank by the borrower as security in lieu of a term loan to M/s Ultra Tech Private Limited Company by the Bank. In this way a mortgage by deposit of title deeds (MDTD) took place. The Bank requested the Tahsildar for mutation of a charge on the basis of the MDTD. When nothing was done, the landowner filed a writ petition before the High Court praying for mutation on the basis of the aforesaid mortgage. The authorities resisted the mutation inter alia on the ground that no entry can be made as the instrument of deposit of title deeds is compulsorily registrable under Section 17(1)(*c*) of the Registration Act. According to the authorities, in the absence of registration and payment of the registration fee and stamp duty, the prayer for mutation cannot be allowed. The High Court considered the objection and negatived the same. The authorities were in appeal thereagainst.

Dismissing the appeal,

Held :

A mortgage inter alia means transfer of interest in the specific immovable property for the purpose

of securing the money advanced by way of loan. Section 17(1)(*c*) of the Registration Act provides that a non-testamentary instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extension of any such right, title or interest, requires compulsory registration. A mortgage by deposit of title deeds in terms of Section 58(*f*) of the Transfer of Property Act surely acknowledges the receipt and transfer of interest and, therefore, one may contend that its registration is compulsory. However, Section 59 of the Transfer of Property Act mandates that every mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument. In the face of it, when the debtor deposits with the creditor title deeds of the property for the purpose of security, it becomes a mortgage in terms of Section 58(*f*) of the Transfer of Property Act and no registered instrument is required under Section 59 thereof as in other classes of mortgage. The essence of a mortgage by deposit of title deeds is the handing over, by a borrower to the creditor, the title deeds of immovable property with the intention that those documents shall constitute a security, enabling the creditor to recover the money lent. After the deposit of the title deeds the creditor and borrower may record the transaction in a memorandum but such a memorandum would not be an instrument of mortgage. A memorandum reducing the terms and conditions with regard to the deposit in the form of a document, however, shall require registration under Section 17(1)(*c*) of the Registration Act, but in a case in which such a document does not incorporate any term(s) or condition(s), it is merely evidential and does not require registration. (Paras 11 to 13)

A mortgage by deposit of title deeds may be effected in a specified town by the debtor delivering to his creditor documents of title to immovable property with the intent to create a security thereon. No instrument is required to be drawn for this purpose. However, the parties may choose to have a memorandum prepared only evidencing the deposit of the title deeds. In such a case also registration is not required. But in a case in which the memorandum recorded in writing creates rights, liabilities or extinguishes those, the same requires registration. Nothing has been brought on record in the present case to show the existence of any instrument which has created or extinguished any right or liability in respect of the MDTD. In the case in hand, the original deeds have just been deposited with the Bank. In the face of it, the charge of mortgage can be entered into the revenue record in respect of mortgage by deposit of the title deeds and for that, an instrument of mortgage is not necessary. A mortgage by deposit of the title deeds further does not require registration. Hence, the question of payment of registration fee and stamp duty does not arise. (Paras 14.1 to 14.5). *State of Haryana* v. *Narvir Singh*, (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1: AIR 2014 SC 339: (2013) 6 CTC 234: (2013) 4 KLT 207: (2013) 101 ALR 205: (2013) 131 AIC 40: (2014) 1 LW 97.

Bench Strength **2**. Coram: **C.K. Prasad** and *Kurian Joseph*, JJ. [Date of decision: 7-10-2013]

Rachpal Mahraj v. Bhagwandas Daruka, AIR 1950 SC 272; United Bank of India Ltd. v. Lekharam Sonaram & Co., AIR 1965 SC 1591, followed

[**Ed.**: Though there is a letter of the Finance Commissioner which inter alia makes "the instrument of deposit of title deeds compulsorily registrable under Section 17(1)(*c*) of the Registration Act" in the area concerned, the principle of law which has been reiterated in the present case, following *Rachpal Mahraj* v. *Bhagwandas Daruka*, AIR 1950 SC 272 and *United Bank of India Ltd.* v. *Lekharam Sonaram & Co.*, AIR 1965 SC 1591, that an MDTD instrument is compulsorily registrable only when the instrument is constitutive of the transaction, is a general principle of law, and would be applicable even without an executive direction such as the abovesaid letter of the Finance Commissioner. This general proposition of law follows from the very language of Section 17(1)(*c*) of the Registration Act, 1908 read with Sections 9, 58(*f*) and 59 of the Transfer of Property Act, 1882. The same is also evident from the extracts from *Bhagwandas* and *Lekharam* set out in the learned judgment, and so also the learned conclusions of this Hon'ble Bench in paras 11 and 14.5 of the judgment, which are completely unqualified conclusions of law.]

— **S. 60** *See* S. 62

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

[856] — S. 60 — Mortgagor's right of redemption under — Principles laid down in *Narandas Karsondas*, (1977) 3 SCC 247, with reference to S. 60 — Held, applicable in respect of transaction between a debtor/mortgagor/borrower and a secured creditor under provisions of SARFAESI Act, 2002 and 2002 Rules — *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13 — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9 — Constitution of India, Art. 300-A* (Paras 38 and 39). *Mathew Varghese* v. *M. Amritha Kumar*, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254: AIR 2015 SC 50: (2014) 4 MPLJ 299: (2014) 6 Mah LJ 34: (2014) 2 KLT 61: (2014) 104 ALR 241: (2014) 136 AIC 15: (2014) 3 LW 289.

Bench Strength **2**. Coram: *A.K. Patnaik* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 10-2-2014]

Narandas Karsondas v. S.A. Kamtam, (1977) 3 SCC 247, followed

— **Ss. 60 and 69** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— **Ss. 60, 69 and 69-A** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610

— **Ss. 60, 69 and 69-A — Right of redemption — Mortgagor's right to make all efforts to save — Extent of** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8 and 9, (2014) 5 SCC 660: (2014) 3 SCC (Civ) 304

— **Ss. 60 and 83** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— **S. 62** *See also* LIMITATION — 'Limitation Act, 1963', Art. 61, (2014) 9 SCC 185: (2014) 4 SCC (Civ) 750

[857] — S. 62 — Right provided by — Held, right of usufructuary mortgagor though styled as "right to recover possession" is for all purposes, the right to redeem and to recover possession — *Words and Phrases — "Right to recover possession"*

Article 61 of the Schedule appended to the Limitation Act refers to the right to redeem or recover possession. While the right of the mortgagor to redeem is dealt with under Section 60 of the TP Act, the right of usufructuary mortgagor to recover possession is specially dealt with under Section 62, which is applicable only to usufructuary mortgages and not to any other mortgage. The said right of usufructuary mortgagor though styled as "right to recover possession" is for all purposes, the right to redeem and to recover possession. Thus, while in case of any other mortgage, right to redeem is covered under Section 60 TPA, in case of usufructuary mortgage, right to redeem and recover possession is dealt with under Section 62 TPA. Special right of usufructuary mortgagor under Section 62 of the TP Act to recover possession commences in the manner specified therein i.e. when mortgage money is paid out of rents and profits or partly out of rents and profits and partly by payment or deposit by mortgagor. Until then, limitation does not start for purposes of Article 61 of the Schedule to the Limitation Act. (Paras 12 and 22)

This distinction in a usufructuary mortgage and any other mortgage is clearly borne out from the provisions of Sections 58, 60 and 62 of the TP Act read with Article 61 of the Schedule to the Limitation Act. Usufructuary mortgage cannot be treated on a par with any other mortgage, as doing so will defeat the scheme of Section 62 of the TP Act. This right of the usufructuary mortgagor has statutory recognition under Section 62 of the TP Act. There is no principle of law on which this right can be defeated. Any contrary view, which does not take into account the special right of usufructuary mortgagor under Section 62 of the TP Act, has to be held to be erroneous on this ground or has to be limited to a mortgage other than a usufructuary mortgage. (Para 12)

In cases where distinction in usufructuary mortgagor's right under Section 62 of the TP Act has been noted, right to redeem has been held to continue till the mortgage money is paid for which there is no time-limit while in other cases right to redeem has been held to accrue on the date of mortgage resulting in extinguishment of the right of redemption after 30 years. Thus reference to these judgments clearly spell out the reasons for conflicting views. (Para 21)

Accordingly, the view taken by the Full Bench of the High Court that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the TP Act has to be upheld. A usufructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on the expiry of 30 years from the date of the mortgage. (Paras 12 and 22). *Singh Ram* v. *Sheo Ram*, (2014) 9 SCC 185: (2014) 4 SCC (Civ) 750: AIR 2014 SC 3447: (2015) 1 Mah LJ 796: (2014) 4 KLT 71: (2014) 107 ALR 177: (2014) 142 AIC 110.

Bench Strength 3. Coram: *T.S. Thakur, Chockalingam Nagappan* and **A.K. Goel**, JJ. [Date of decision: 21-8-2014]

— **Ss. 62 and 60** *See also* LIMITATION — 'Limitation Act, 1963', Art. 61, (2014) 9 SCC 211: (2014) 4 SCC (Civ) 776

[858] — Ss. 62, 60 and 58 — Usufructuary mortgagor's right to seek redemption and recovery of possession — Distinguished from redemption right of other mortgagors. *Singh Ram* v. *Sheo Ram*, (2014) 9 SCC 185: (2014) 4 SCC (Civ) 750: AIR 2014 SC 3447: (2015) 1 Mah LJ 796: (2014) 4 KLT 71: (2014) 107 ALR 177: (2014) 142 AIC 110.

Bench Strength 3. Coram: *T.S. Thakur, Chockalingam Nagappan* and **A.K. Goel**, JJ. [Date of decision: 21-8-2014]

— **S. 65(c)** *See* S. 54

— **S. 65-A** *See also* S. 111

[859] — Ss. 65-A, 105, 109 and 7, 8 & 48 — Creation of lease by mortgagor after mortgage has been entered into — Binding effect on mortgagee — Statutory exception to nemo dat quod non habet principle, contained in S. 65-A TPA — Scheme of S. 65-A TPA and its limits, explained — *Overriding effect of S. 13(13), SARFAESI Act, 2002 over S. 65-A TPA once S. 13(2), SARFAESI Act, 2002 notice has been received by mortgagor, vide S. 35, SARFAESI Act, 2002 — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(13), (2) and 35. Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— Ss. 67 and 69 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, Ss. 29 and 31, (2014) 12 SCC 368: (2014) 5 SCC (Civ) 126

— Ss. 69, 60 and 69-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 37, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 69 and 69-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, S. 29, (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 37, 35 and 13(8), (2014) 5 SCC 610

— S. 37 r/w S. 35, (2014) 5 SCC 610

— Ss. 69, 76 and 67 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(3), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 76(c) *See* S. 54

— S. 100 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — State Financial Corporations Act, 1951, S. 29, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— S. 100 — Tax arrears vis-à-vis secured creditor — Tax statute if creates a first/overriding charge *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Crown Debt/Debt owed to State/Tax arrears, (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— Ss. 100 and 58 *See* 'Common law principles', (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

See also (2013) 14 SCC 619: (2014) 5 SCC (Civ) 681

— S. 105 *See* S. 65-A; S. 111; S. 122

— S. 105 — Types of leases — Old grant — Lease of building without lease of the land *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Old grant', (2014) 9 SCC 344: (2014) 5 SCC (Civ) 50

— Ss. 105 to 107, 109, 7, 8 and 65-A *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— Ss. 105 and 107 *See also* 'Ownership and Title', (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

[860] — Ss. 105, 107 and 106 — Renewal of lease and extension of lease — Distinction between, if any — Extension of lease if permissible without a fresh registered lease for period of extension of lease — *Question not considered as the present case was a clear case of renewal of lease, in which a fresh registered lease deed for period of renewal is mandatory* (Para 12). *Bharat Petroleum Corpn. Ltd.* v. *Rama Chandrashekhar Vaidya*, (2014) 1 SCC 657: (2014) 1 SCC (Civ) 635: (2013) 2 CTC 881: (2014) 4 Mah LJ 69: (2014) 3 MPLJ 39: (2013) 3 LW 296.

Bench Strength **2**. Coram: **Aftab Alam** and *Ranjana P. Desai*, JJ. [Date of decision: 2-4-2013]

— Ss. 105, 107, 106 and 116 — Renewal of lease — Effect of statute providing for compulsory statutory provision of renewal on renewal clause contained in lease — Supersession thereof *See* ACQUISITION, REQUISITION AND NATIONALISATION — 'Burmah Shell (Acquisition of Undertakings in India) Act, 1976', S. 5(2), (2014) 1 SCC 657: (2014) 1 SCC (Civ) 635

[861] — Ss. 105, 107, 106 and 116 — Renewal of lease — Need for fresh registered lease deed for period of renewal — Mandatory nature of — Effect of non-execution of such registered fresh lease deed for period of renewal of lease — Continuation of lessee in possession during such renewal period without a fresh registered lease deed as a month-to-month tenant — Termination of such tenancy by notice — Validity of

The predecessor of the appellant Company was in occupation of the subject piece of land by virtue of a 25 year lease deed dated 22-9-1955. The said lease stood transferred to Central Government by virtue of Burmah Shell (Acquisition of Undertakings in India) Act, 1976 and later following notification the lease was transferred to and vested in the appellant Company. The appellant gave notice to the respondent lessor for renewal of lease for a further period of 25 years w.e.f. 1-3-1980 in terms of the unilateral renewal clause of lease deed; but without any fresh lease deed being executed and registered, the appellant lessee continued to occupy the premises for another 25 years. On nearing expiry of second term of 25 years, the appellant lessee gave another notice dated 7-10-2004 for renewal of lease for another period of 25 years to the lessor which was responded to by the

respondent lessor by issuing a notice of termination of tenancy and who then filed a suit for eviction which was ultimately allowed by the High Court. Hence this appeal by the appellant lessee.

The appellant argued that the right of renewal under the lease and the right of renewal in terms of Section 5(2) of the Act are two distinct and separate rights, the former being contractual and latter statutory and thus could be exercised separately and successively, independently of each other. The appellant further argued that exercise of the contractual right would not abrogate the appellant's statutory right and therefore the appellant is entitled to a further renewal of the lease in exercise of the statutory right under Section 5(2) of the Act.

Dismissing the appeal with costs,

Held :

There are only two possibilities in the absence of a fresh lease deed having been executed and registered between the parties: one, that the renewal notice was in exercise of the renewal clause in the lease deed. If that be so, the execution and registration of a fresh deed of lease was essential for the renewal of lease to take place. In such case, the appellant's status became that of a month-to-month tenant and after twenty-five years, in that relationship it would be ludicrous for the appellant to turn around and claim renewal of the lease under Section 5(2) of the 1976 Act. The present scenario, is unquestionably a case of renewal of lease and not of extension of lease. Thus, as the second renewal was claimed under a clause of the previous lease dated 22-9-1955, the appellant has no case and the lessor cannot be faulted for terminating the tenancy by a notice under the Transfer of Property Act, 1882. (Paras 10 to 12)

The other possibility is that though in the renewal notice dated 17-10-1979 there is no reference to Section 5(2) of the 1976 Act, the renewal must be deemed to have taken place under that provision because the 1976 Act had come into force on 24-1-1976 and by virtue of Section 5(2) of the 1976 Act, the renewal clause of the existing lease stood superseded. If the "renewal", beginning from 1-3-1980 is to be deemed under Section 5(2) of the 1976 Act that would be a legally valid and correct renewal even in the absence of a fresh deed being executed between the parties. If that be the position, then the appellant has already exercised and exhausted its right under Section 5(2) of the 1976 Act and there can be no question of a second renewal in terms of the statutory provision. Thus, viewed from any angle, the appellant cannot claim any further renewal of lease beyond 28-2-2005. (Para 13). *Bharat Petroleum Corpn. Ltd.* v. *Rama Chandrashekhar Vaidya*, (2014) 1 SCC 657: (2014) 1 SCC (Civ) 635: (2013) 2 CTC 881: (2014) 4 Mah LJ 69: (2014) 3 MPLJ 39: (2013) 3 LW 296.

Bench Strength **2**. Coram: **Aftab Alam** and *Ranjana P. Desai*, JJ. [Date of decision: 2-4-2013]

State of U.P. v. Lalji Tandon, (2004) 1 SCC 1; Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394; Hardesh Ores (P) Ltd. v. Hede and Co., (2007) 5 SCC 614, applied

Hindustan Petroleum Corpn. Ltd. v. Dolly Das, (1999) 4 SCC 450, explained and distinguished

Bharat Petroleum Corpn. Ltd. v. Rama Chandrashekhar Vaidya, Civil Revision Application No. 535 of 2009, order dated 14-10-2009 (Bom), affirmed

Bharat Petroleum Corpn. Ltd. v. P. Kesavan, (2004) 9 SCC 772, distinguished on facts

[862] — Ss. 105, 108(c), 109 & 111 and Ss. 7, 8 & 48 — Lawful possession of premises during subsistence of valid lease, held, is that of lessee and not lessor — Without determination of a valid lease, possession of lessee is lawful and such lawful possession of a lessee has to be protected by all courts and tribunals — *Hence, during subsistence of a valid lease which is prior in time, subsequent mortgagee i.e. secured creditor cannot take over possession of secured asset in possession of such lessee until lawful possession of the lessee gets determined — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13(4) and 14 — Words and Phrases — "Lawful possession". Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

[863] — Ss. 105, 108(c), 109, 111, 58 and 7, 8 & 48 — Lease — Nature of, as property and its protection under Art. 300-A of Constitution — Nemo dat quod non habet — Transactional exigibility of lease i.e. priority of lessee's rights over those of subsequent mortgagee of lessor irrespective of notice or knowledge of prior lease on part of subsequent mortgagee — *Held, as per Ss. 105 and 111 TPA, so long as lease of immovable property does not get determined, lessee has a right to enjoy the property and this right is a right to property and this right cannot be taken away without the authority of law as provided in Art. 300-A of the Constitution — Without determination of a valid lease, possession of lessee is lawful and such lawful possession of a lessee has to be protected by*

all courts and tribunals — Further held, where before a mortgage is created in respect of immovable property, and borrower had already leased out the same in favour of a lessee either as the owner or as a person competent or authorised to transfer the immovable property in accordance with S. 7 TPA, if such a lease is made, by virtue of S. 8 TPA, the lessee will have the right to enjoy the leased property in accordance with terms and conditions of lease irrespective of whether a subsequent mortgagee has knowledge of such a lease or not — Words and Phrases — "Lease" and "property" — Constitution of India, Art. 300-A. Harshad Govardhan Sondagar v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength 2. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— **Ss. 105 and 108(j)** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— **Ss. 105 and 111** *See* 'Easements Act, 1882', Ss. 52 and 60 to 63, (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

— **S. 106** *See* S. 105

— **S. 107** *See* S. 40 Paras 2; S. 105

See also ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 7 and 11, (2013) 14 SCC 354: (2014) 2 SCC (Civ) 668

— **S. 108(b)** *See* S. 55(1)(f)

— **S. 108(c)** *See* S. 105

— **S. 108(g)** *See* S. 54

— **S. 108(j)** *See* RENT CONTROL AND EVICTION — 'Sub-Letting/Sub-Tenant/Sub-Tenancy', (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

— **S. 108(l)** *See* RENT CONTROL AND EVICTION — 'Rent', (2013) 15 SCC 610: (2014) 5 SCC (Civ) 383

— **S. 108(o) — Specific purpose of lease — Proof of** *See* TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— **S. 108(q)** *See also* RENT CONTROL AND EVICTION — 'Eviction decree/order', (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745

— **Ss. 108(q) and 111** *See* RENT CONTROL AND EVICTION — 'Time for vacating premises', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

— **S. 109** *See also* S. 65-A; S. 105; S. 111

— **S. 109 — Lessor's transferee when may claim rent directly from lessee — Provision in S. 13(4)(d) SARFAESI Act, 2002** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **Ss. 109 and 108(c)** *See* CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Civil/Private disputes, Arts. 226 and 227, (2014) 6 SCC 508: (2014) 3 SCC (Civ) 601

— **Ss. 109 and 111(g)(2)** *See* RENT CONTROL AND EVICTION — 'Landlord-Tenant Relationship', (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749

— **S. 111** *See also* S. 105

— **Ss. 111 and 105** *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

[864] — Ss. 111, 109, 65-A and 105 — Leases created prior to a mortgage and during subsistence of mortgage granted by lessor — Termination of *— Class (1): lease created prior to grant of mortgage by lessor, or, Class (2): lease created by mortgagor during subsistence of mortgage under S. 65-A TPA but prior to receipt of S. 13(2), SARFAESI Act, 2002 notice — Termination of either class of lease above i.e. Class (1) or Class (2) lease, held, can only be done as per modes provided in S. 111 TPA — S. 13, SARFAESI Act, 2002 does not contain any provision under which either class of lease above may be terminated, and nor does any action initiated under S. 13 or S. 14, SARFAESI Act, 2002 terminate either class of lease above, automatically — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 14. Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength 2. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

— **Ss. 111(c), 116, 111(h) and 106** *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

— **Ss. 111(e) & (f) — Valid surrender — What is** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— **S. 111(f) — Surrender — Instance of** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13, 14, 34, 35 and 37, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **S. 111(g)(2)** *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

See also RENT CONTROL AND EVICTION — 'Denial of Title of Landlord', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— **S. 111(g)(2) — Determination of lease by forfeiture — Denial of lessor's title** *See* RENT CONTROL AND EVICTION — 'M.P. Accommodation Control Act, 1961 (41 of 1961)', S. 12(1)(c), (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— **S. 116** *See* S. 105

— **S. 118** *See also* S. 40 Paras 2

[865] — Ss. 118, 54 and 122 — Transfer of cooperative society membership/flat — Validity — Passing of consideration — Proof —

Non-existence of consideration (i.e. shares) on date of execution of transfer documents — Effect — *Stand of transferee that consideration was passed on to transferor by way of transfer of shares — These shares were not even acquired by transferee on date of execution of transfer documents — Held, it is difficult to accept that parties had agreed to pass on consideration by transfer of shares, which were not even owned by transferee on date of transfer of property in question — On facts, transfer, held suspicious, hence not valid — Moreover, in the alleged transfer document relied upon by transferee (respondent) herself in support of transfer of property (flat) in her favour, fact of transfer being made without consideration was mentioned — Contract Act, 1872, Ss. 25 and 10 — Evidence Act, 1872, S. 17. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

— S. 122 *See* S. 118; S. 123; S. 126

See also DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Generally, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

See also FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— Ss. 122, 54 and 5 — Withdrawal/revocation of offer of transfer *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[866] — Ss. 122 and 123 — Gift — Retention of life interest by donor, held, valid. *Renikuntla Rajamma* v. *K. Sarwanamma*, (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1: AIR 2014 SC 2906: (2015) 108 ALR 140: (2014) 4 CTC 572: (2014) 3 KLT 469: (2014) 141 AIC 77: (2015) 1 MPLJ 15.

Bench Strength **3**. Coram: **T.S. Thakur**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 17-7-2014]

K. Balakrishnan v. K. Kamalam, (2004) 1 SCC 581; R. Rajamma v. K. Sarwanamma, Second Appeal No. 809 of 2003, order dated 9-3-2006 (AP), affirmed

Lallu Singh v. Gur Narain, AIR 1922 All 467; Revappa v. Madhava Rao, AIR 1960 Mys 97; Tirath v. Manmohan Singh, AIR 1981 P&H 174, approved

Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker, (1997) 2 SCC 255, distinguished on facts

— Ss. 122, 126 and 54 *See also* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Contract Act, 1872, S. 25(1), (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

[867] — Ss. 122, 126, 54, 5, 7 and 105 — Validity of transfer — Parameters for examining validity as per nature of transaction — Transaction involving fiduciary relationship between parties with no reciprocal consideration — Parameters for examining validity of such transaction, held, are different from ones applicable in ordinary transaction for consideration — *Contract Act, 1872, Ss. 25 and 16. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib, AIR 1967 SC 878; Krishna Mohan Kul v. Pratima Maity, (2004) 9 SCC 468; Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558, followed

Ashburner's Principles of Equity, 2nd Edn., p. 229, cited

— S. 123 *See also* S. 40 Paras 2; S. 122

[868] — Ss. 123 and 122 — Gift of immovable property — Gift deed executed by donor retaining possession over property and reserving donor's right to enjoy the same during donor's lifetime — Validity — *Keeping in view conflict of opinion between two-Judge Benches of Supreme Court in* Naramadaben Maganlal Thakker, *(1997) 2 SCC 255 and* K. Balakrishnan, *(2004) 1 SCC 581 on construction of gift deed as also authoritative pronouncement on provisions of Ss. 122 and 123, matter referred to a larger Bench for decision — Constitution of India, Art. 141. Renikuntla Rajamma* v. *K. Sarwanamma*, (2014) 9 SCC 456: (2014) 5 SCC (Civ) 72.

Bench Strength **2**. Coram: *S.B. Sinha* and *Markandey Katju*, JJ. [Date of decision: 31-1-2007]

[869] — Ss. 123, 122 and 129 (after its amendment in 1929) — Gift of immovable property reserving life interest in property for donor, valid — Delivery of possession to donee not essential condition — *Rule of Hindu law making transfer of possession a condition for completion of a valid gift stood superseded by S. 123 after the 1929 amendment to S. 129 — Property gifted by retaining possession and right to receive rents of property by donor during donor's lifetime — Held, gift valid*

The appellant, a Hindu woman, executed a registered gift deed in respect of an immovable property in favour of the respondent reserving to herself the right to retain possession and to receive rents of the property during her lifetime. The gift was accepted by the respondent. But subsequently the appellant revoked the gift deed by a revocation deed. The respondent filed a suit assailing the revocation deed and seeking a declaration that the same was invalid and void ab initio. The trial court found that the appellant-defendant had failed to prove that the gift deed set up by the respondent-plaintiff was vitiated by fraud or undue influence or that it was a sham or nominal document. The gift, according to the trial court, had been validly made and accepted by the respondent-plaintiff, hence, was irrevocable in nature. It was also held that since the appellant

donor had taken no steps to assail the gift made by her for more than 12 years, the same was voluntary in nature and free from any undue influence, misrepresentation or suspicion. The fact that the appellant donor had reserved the right to enjoy the property during her lifetime did not affect the validity of the deed, opined the trial court. Accordingly, the suit was decreed. The first appellate court and the High Court in second appeal concurred with the findings of the trial court.

An apparent conflict between two earlier decisions of the Supreme Court viz. *Naramadaben Maganlal Thakker*, (1997) 2 SCC 255 and *K. Balakrishnan*, (2004) 1 SCC 581 had led to reference to the present Bench of the Court for an authoritative pronouncement as to the true and correct interpretation of Sections 122 and 123 of the Transfer of Property Act.

Dismissing the donor's appeal,

Held :

Section 123 read with Section 122 of the TP Act provides that a gift made by a registered instrument duly signed by or on behalf of the donor and attested by at least two witnesses is valid, if the same is accepted by or on behalf of the donee. That such acceptance must be given during the lifetime of the donor and while he is still capable of giving is evident from a plain reading of Section 122. A conjoint reading of Sections 122 and 123 makes it abundantly clear that "transfer of possession" of the property covered by the registered instrument of the gift duly signed by the donor and attested as required is not a sine qua non for the making of a valid gift. (Para 11)

Section 123 of the TP Act is in two parts. The first part deals with gifts of immovable property while the second part deals with gifts of movable property. The difference in the two provisions lies in the fact that insofar as the transfer of movable property by way of gift is concerned the same can be effected by a registered instrument or by delivery. Such transfer in the case of immovable property no doubt requires a registered instrument but the provision does not make delivery of possession of the immovable property gifted as an additional requirement for the gift to be valid and effective. If the intention of the legislature was to make delivery of possession of the property gifted also as a condition precedent for a valid gift, the provision could and indeed would have specifically said so. There is indeed no provision in law that ownership in property cannot be gifted without transfer of possession of such property. Absence of any such requirement can only lead to the conclusion that delivery of possession is not an essential prerequisite for the making of a valid gift in the case of immovable property. (Paras 16 and 18)

The language employed in Section 129 before its amendment was clear enough to give Section 123 an overriding effect vis-à-vis rules of Hindu law pertaining to gift including the rule that required possession of the property gifted to be given to the donee. The amendment has made the position more explicit by bringing all other rules of Hindu and Buddhist law also under Chapter VII and removing the protection earlier available to such rules from the operation of Chapter VII. Judicial pronouncements as to the true and correct interpretation of Section 123 of the TP Act have for a fairly long period held that Section 123 of the Act supersedes the rule of Hindu Law which makes the delivery of possession an essential condition for the completion of a valid gift. (Paras 12, 14 and 15)

The decision in *Maganlal Thakker*, (1997) 2 SCC 255 clearly rests on the facts of that case. Absolute transfer of ownership in the gifted property in favour of the donee was absent in that case which led the Supreme Court to hold that the gift was conditional and had to become operative only after the death of the donee. The judgment is in that view clearly distinguishable and cannot be read to be an authority for the proposition that delivery of possession is an essential requirement for making a valid gift. (Para 19)

In the present case, the execution of registered gift deed and its attestation by two witnesses is not in dispute. It has also been concurrently held by all the three courts below that the donee had accepted the gift. The recitals in the gift deed also prove transfer of absolute title in the gifted property from the donor to the donee. What is retained is only the right to use the property during the lifetime of the donor which does not in any way affect the transfer of ownership in favour of the donee by the donor. Therefore, the High Court was justified in refusing to interfere with the decree passed in favour of the donee. (Paras 20 and 21). *Renikuntla Rajamma* v. *K. Sarwanamma*, (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1: AIR 2014 SC 2906: (2015) 108 ALR 140: (2014) 4 CTC 572: (2014) 3 KLT 469: (2014) 141 AIC 77: (2015) 1 MPLJ 15.

Bench Strength **3**. Coram: **T.S. Thakur**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 17-7-2014]

K. Balakrishnan v. K. Kamalam, (2004) 1 SCC 581; R. Rajamma v. K. Sarwanamma, Second Appeal No. 809 of 2003, order dated 9-3-2006 (AP), affirmed

Lallu Singh v. Gur Narain, AIR 1922 All 467; Revappa v. Madhava Rao, AIR 1960 Mys 97; Tirath v. Manmohan Singh, AIR 1981 P&H 174, approved

Naramadaben Maganlal Thakker v. Pranjivandas Maganlal Thakker, (1997) 2 SCC 255, distinguished on facts

— S. 126 *See also* S. 122

[870] — S. 126 — Irrevocability of valid gift — Affirmed. *Renikuntla Rajamma* v. *K. Sarwanamma*, (2014) 9 SCC 445: (2014) 5 SCC (Civ) 1: AIR 2014 SC 2906: (2015) 108 ALR 140: (2014) 4 CTC 572: (2014) 3 KLT 469: (2014) 141 AIC 77: (2015) 1 MPLJ 15.

Bench Strength **3**. Coram: **T.S. Thakur**, *V. Gopala Gowda* and *Chockalingam Nagappan*, JJ. [Date of decision: 17-7-2014]

R. Rajamma v. K. Sarwanamma, Second Appeal No. 809 of 2003, order dated 9-3-2006 (AP), affirmed

[871] — Ss. 126, 122 and 54 — Rescission of alleged gift executed on basis of abuse of fiduciary relationship — Transfer of cooperative society membership/flat by alleged gift — Validity of transfer — Onus of proof — Effect of fiduciary relationship between parties — Instances establishing such fiduciary relationship and dominating position of one party — *Held, when parties are in fiduciary relationship, burden of proving genuineness/fairness of transaction is on party who held the dominating/ domineering position — P, a spinster (appellant) resided with family of her sister including sister, sister's husband, sister's daughter S and son-in-law i.e. M for a very long time — P always treated S as her daughter and M as her son, and therefore extended all help/support to M at all times — When M was transferred to another city, P offered her flat in that city for M to stay in — P also let M exclusively operate bank account which was opened in joint name of P and M — P also extended loans to M when after giving up his employment he wanted to set up independent business — Held, these facts demonstrate a fiduciary relationship of absolute trust and faith between P and M — Further, in Indian society, relationship between P and M was very delicate and sensitive in which M was in a domineering position — Later, P raised a dispute that she did not transfer her flat which she had permitted M to stay in, in the name of K, mother of M (i.e. respondent) — In such circumstances, held, it was K, alleged purchaser/donee who had to prove genuineness of alleged transfer of P's flat made in her favour without consideration, as it was only the relationship between P and M which came to be extended to respondent — Failure of respondent purchaser to discharge this burden — Evidence on other hand by P establishing that M had obtained her signatures for executing alleged transfer documents — Even otherwise, there was no justification for P to transfer her flat worth Rs 4 lakhs, free of cost to respondent with whom P had no direct intimate relationship — Transfer of membership/flat held, not valid — Restoration of flat in question to P (appellant) directed — Contract Act, 1872, Ss. 25, 19, 19-A, 16, 17 and 18 — Evidence Act, 1872, Ss. 111 and 101 to 104 — Trusts Act, 1882, S. 88 — Specific Relief Act, 1963, S. 27. Pratima Chowdhury* v. *Kalpana Mukherjee*, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504: AIR 2014 SC 1304.

Bench Strength **2**. Coram: *P. Sathasivam, C.J.* and **J.S. Khehar**, J. [Date of decision: 10-2-2014]

Subhas Chandra Das Mushib v. Ganga Prosad Das Mushib, AIR 1967 SC 878; Krishna Mohan Kul v. Pratima Maity, (2004) 9 SCC 468; Anil Rishi v. Gurbaksh Singh, (2006) 5 SCC 558, followed

Ashburner's Principles of Equity, 2nd Edn., p. 229, cited

— S. 129 (after its amendment in 1929) *See* S. 123

— Expln. I *See* S. 3 "notice"

31. TRANSFER OF PROPERTY/EXTINGUISHMENT OF TITLE BY OPERATION OF LAW

See LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40, 45(2)(a), (b), (c), 48-A, 52, 53(a), 67, 77, 80, 81, 82, 84 and 85, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

See also RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

See also TENANCY AND LAND LAWS — 'Ceiling on Land' — Urban Land (Ceiling and Regulation) Act, 1976, Ss. 10(3) to (6) (Repealed in 1999), (2014) 12 SCC 523: (2014) 5 SCC (Civ) 130

— Acquisition of land — Title when divested *See* RENT CONTROL AND EVICTION — 'Eviction Suit/Trial', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

— Date from which effective — Merger of companies — Transfer of ownership of assets to final merged entity, held, takes place on date of merger (in present case brought about by statute) *See* 'Ownership and Title', (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— Withdrawal from acquisition after possession had been taken under S. 16 of 1894 Act — Impermissibility *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 48, 4, 6, 16 and 17(1) & (4), (2014) 13 SCC 802: (2014) 5 SCC (Civ) 802

32. TRESPASS TO LAND/TRESPASSER

— Liability to pay mesne profits/damages for period of illegal possession — Dispossession of landowners prior to issuance of preliminary notification under S. 4(1) of 1894 Act — Claim for rent/damages for land concerned from the date the possession thereof taken till the date of preliminary notification issued under LA Act, allowed *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4(1), 16 and 11, (2014) 13 SCC 613: (2014) 5 SCC (Civ) 735

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PROPERTY OF THE ASSOCIATION, SOCIETY OR CLUB

See ASSOCIATIONS, SOCIETIES AND CLUBS

PROTECTED TENANCY/BENEFIT OF RENT/TENANCY ACT

See RENT CONTROL AND EVICTION

PROVINCIAL SMALL CAUSE COURTS ACT, 1887

See COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts'

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See also STATUTE LAW

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PUBLIC INTEREST/PUBLIC PURPOSE/PUBLIC TRUST DOCTRINE

See ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function

PUBLIC INTEREST LITIGATION

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

PUBLIC LAW/CONSTITUTIONAL TORTS/ ACCIDENTS

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

See also TORT LAW

PUBLIC LAW TORTS/CONSTITUTIONAL/ PUBLIC SAFETY/BODILY INTEGRITY

See CONSTITUTIONAL LAW

See also CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Narrowly construed

PUBLIC POLICY

See CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW

See also DOCTRINES AND MAXIMS

PUBLIC PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971

See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

See also RENT CONTROL AND EVICTION — 'Public Premises'

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See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

See RENT CONTROL AND EVICTION

PUBLIC PREMISES GUIDELINES RE PUBLIC SECTOR UNDERTAKINGS/FINANCIAL INSTITUTIONS

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PUBLIC TRUST DOCTRINE/PUBLIC PURPOSE/PUBLIC INTEREST

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See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

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See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

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— 'Article 136' — Procedure to be followed re Art. 136

— 'Article 226' — Procedure to be followed re Art. 226

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See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

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See CONSTITUTION OF INDIA — 'Article 141' — Doctrine of stare decisis — Binding effect of law declared by Supreme Court — Forums binding on — Supreme Court whether itself bound — Inter-bench conflicts

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See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

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— S. 17 *See also* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 7 and 11, (2013) 14 SCC 354: (2014) 2 SCC (Civ) 668

— Ss. 17, 18 and 49 *See also* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 17, 18 and 49 — Registration of agreement to sell/contract for sale — Bona fide purchasers for value without notice — Proof as to *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 17 and 49 *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 17(1)(a) to (c) *See* FAMILY AND PERSONAL LAWS — 'Succession and Inheritance' — Will, (2012) 13 SCC 80: (2014) 2 SCC (Civ) 116

— Ss. 17(1)(b) & (c) and S. 49 & proviso thereto *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

— Ss. 17(1)(c) & (b) *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 59 and 58(f), (2014) 1 SCC 105: (2014) 1 SCC (Civ) 1

— S. 18(2)(i) — "Composition deed" — Family settlement does not effect transfer of property *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Family arrangement/settlement, (2011) 15 SCC 417: (2014) 2 SCC (Civ) 605

— Ss. 21 and 22 *See* COOPERATIVE SOCIETIES — 'General Issues' — Cooperative Housing/Housing Society, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 47 to 50 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 54, 53-A, S. 3 Expln. II, Ss. 48 and 40 Para 2, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— Ss. 57 and 60 *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 4 and 6, (2013) 16 SCC 392: (2014) 5 SCC (Civ) 496

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RENT CONTROL AND EVICTION

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1. GENERALLY

[872] — **Object of Rent Control legislation** — *While legislative intervention has tried to moderate the law with a view to restoring the balance between the rights and obligations of the landlords and the tenants, the spirit and purpose underlying the rent legislation continues to be to protect the tenants against arbitrary and unfair demands for eviction or enhancement of rents* (per T.S. Thakur, J.) — *Delhi Rent Control Act, 1958 (59 of 1958)* (Paras 24 to 31). *Dina Nath* v. *Subhash Chand Saini*, (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46: (2014) 107 ALR 145: (2014) 138 AIC 104.

Bench Strength 2. Coram: **T.S. Thakur**[2] and **J.S. Khehar**[1], JJ. [Date of decision: 16-4-2014]

2. ABUSE OF PROCESS OF COURT/LAW/FRAUD ON COURT

See 'Time for vacating premises', (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122

3. ADVERSE POSSESSION

See LIMITATION — 'Limitation Act, 1963', S. 27 and Art. 65, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

4. ARREARS OF RENT/DEFAULT/TENDER OF RENT/STRIKING OFF DEFENCE

See 'Delhi Rent Control Act, 1958 (59 of 1958)', Ss. 15(1) & (7), (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46

— S. 15(7), (2014) 11 SCC 20

See also 'Eviction Decree/Order', (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465

See also CIVIL PROCEDURE CODE, 1908, S. 47 and Or. 21 & Or. 23 R. 3, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— Ss. 148, 47 and Or. 23 R. 3, (2014) 2 SCC 465

[873] — Protection given under S. 13 of 1961 M.P. Act to defaulting tenant in possession, on payment or deposit of rent into court — Invocation of — Stage of eviction proceedings up to which such protection is available — Not available at execution stage of eviction decree — *Held, in order to invoke the said protection, the payment or deposit of rent has to be made during the pendency of the suit for eviction or during the appeal (by tenant) against the decree or order of eviction — Protection under S. 13 of 1961 M.P. Act is not available if the said payment or deposit is made during the execution of decree for eviction — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 13(1), (5) and 12(1)(a). Shivshankar Gurgar* v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

Nai Bahu v. Lala Ramnarayan, (1978) 1 SCC 58, explained and distinguished on facts

Shivshankar Gurgar v. Dilip, Civil Revision No. 173 of 2007, decided on 28-10-2010 (MP), reversed

[874] — Striking off defence — Rent Controller's discretion under S. 15(1), Delhi Rent Control Act, 1958 — Mode of exercise of and matters to be considered by Rent Controller — Arrears of rent — Payment of excess rent over and above amount directed to be deposited — Adjustment against future rent — Disagreeing at the Bench, matter referred to larger Bench on these issues — ***Per Khehar, J.***, *such action is permissible, if non-deposit (in compliance with a Rent Controller's directions) was conscious or wilful, and without any reasonable justification — Relevant date for determining disobedience of the tenant is singularly, exclusively and solely referable to the mandate of schedule of payment in Rent Controller's order — Deposits and payments required to be made by a tenant under S. 15(1) and/or S. 15(3), are attributable exclusively for the purpose expressed by the tenant — Acts of the tenant to make up deficiencies by making deposits beyond the date/time contemplated by the Rent Controller, could be treated as an acceptable payment/deposit, if there is adequate and acceptable explanation for the delayed deposit and not otherwise — Subsequent acts of magnanimity shown by a tenant, to pay more than what was required by the Rent Controller are irrelevant — Payment voluntarily made by the tenants towards arrears of rent, cannot be attributable or assignable or creditable, towards future rent — Said payment was made, in exercise of free discretion, towards arrears of rent — It shall be deemed to be a deposit by the tenants for that purpose, and for no other purpose — **Per Thakur, J. (disagreeing)**, payment of the excess amount having been acknowledged by the landlord, the same must in the absence of a direction from the court be deemed to have been received and held by the landlord for the benefit of the tenant — Adjustment of any such excess amount against future liability was the only possible and legally valid method of appropriation of that amount — Viewed thus, the amount paid by the petitioner on 21-4-2008 covered the entire period up to February 2009. Dina Nath* v. *Subhash Chand Saini*, (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46: (2014) 107 ALR 145: (2014) 138 AIC 104.

Bench Strength **2**. Coram: **T.S. Thakur**[2] and **J.S. Khehar**[1], JJ. [Date of decision: 16-4-2014]

5. BENEFIT OF RENT/TENANCY ACT/PROTECTED TENANCY

— Public Premises Act, 1971 — Occupants to whom applicable *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 15, 2(e) & (g) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

6. BOMBAY RENTS, HOTEL AND LODGING HOUSE RATES CONTROL ACT, 1947 (57 OF 1947)

— S. 4(1) *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— S. 13 *See* PRACTICE AND PROCEDURE — 'Res judicata', (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387

— S. 13(1)(e) *See also* 'Sub-Letting/Sub-Tenant/Sub-Tenancy', (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

See also CIVIL PROCEDURE CODE, 1908, S. 115, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

— S. 15-A *See also* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act,

1971', Ss. 2(e), 2(g), 4 and 5, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— Ss. 15-A, 5(4-A) r/w S. 5(11) *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Presidency Small Cause Courts Act, 1882, S. 41(1) (as amended by Maharashtra Act 19 of 1976), (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

— S. 28 *See also* 'Jurisdiction', (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759

— Ss. 28, 50 and 51 *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Presidency Small Cause Courts Act, 1882, Ch. VII S. 41(1) (as amended by Maharashtra Act 19 of 1976), (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

7. BONA FIDE REQUIREMENT OF LANDLORD

See 'Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965)', Ss. 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii), (2011) 15 SCC 534: (2014) 2 SCC (Civ) 635

See also 'U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972)', S. 21(1)(a), (2011) 15 SCC 794: (2014) 2 SCC (Civ) 762

[875] — Adducing of evidence — Eviction decree on ground of personal requirement — Tenant alleging sale deed in favour of appellant-landlord was a sham transaction or not was a sham document, created with intention of evicting them — Courts below recording finding of fact negating such plea — Set aside by High Court, remitting matter to Rent Control Court to examine whether sale deed in favour of appellant-landlord was a sham transaction or not — Sustainability — *Held, if anyone wants to establish that sale transaction was sham and collusive, he ought to plead and prove a secret arrangement between vendor and purchaser, no right, title or interest passed or intended to pass to purchaser under the sale, and deed was executed with sole intention of securing eviction of tenants — Where such direct evidence is not available it can be established by circumstantial evidence — No such evidence was led — There was no material to demonstrate any link, connection, relationship or friendship between erstwhile owner and appellant — If an owner sells a property for a modest price as in this case, on account of the meagre returns therefrom and inability to either evict the tenant or increase the income therefrom, that by itself cannot lead to a presumption that the sale transaction is sham — High Court's order not sustainable, hence set aside — Order of eviction passed by courts below, restored — Respondents granted time to vacate premises on their filing usual undertaking before the Court — Words and Phrases — "Sham" — CPC, 1908, Or. 6 R. 4 — Transfer of Property Act, 1882, Ss. 54, 53 and 109*

Allowing the appeal,

Held :

A document will be "sham" if it ostensibly creates rights/obligations, which are not intended to be acted upon by the parties to the deed, and is executed in pursuance of a secret arrangement, with the ulterior motive of securing an undisclosed advantage to the owner. It involves collusion between the parties to the document to achieve an illegal objective. Therefore, if anyone wants to establish that a sale transaction was sham and collusive, he ought to plead and prove a secret arrangement between the vendor and the purchaser, that the sale was nominal and that no right, title or interest passed or intended to pass to the purchaser under the sale, and the deed was executed with the sole intention of securing the eviction of the tenants or securing some other benefit to the vendor. Where direct evidence of such secret arrangement is not available, it may be possible to establish the sham nature of a document by some clinching circumstantial evidence. No such evidence has been led in this case. On the other hand, the respondents merely relied on the following three circumstances in support of their contention that the transaction was sham and collusive: (*a*) the premises sold is a portion of a larger building; (*b*) that the price was meagre; and (*c*) the previous owner had earlier failed in his attempt to evict the respondents. The very circumstances mentioned by the respondents to contend that the transaction is sham, can actually be valid reasons for an owner to sell the premises. Therefore, if an owner sells a property for a modest price as in this case, on account of the meagre returns therefrom and inability to either evict the tenant or increase the income therefrom, that by itself cannot lead to a presumption that the sale transaction is sham. There was no material to demonstrate any link, connection, relationship or friendship between the erstwhile owner and the appellant. (Paras 6 and 8)

The order of the High Court is set aside and order of eviction passed by the courts below restored. The respondents are granted three months' time to vacate the premises in question on their filing usual undertaking before the Court. (Paras 10 and 11). *V.M. Salim* v. *Fathima Muhammed*, (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749: (2006) 3 KLT 813.

Bench Strength **3**. Coram: *Y.K. Sabharwal, C.J.* and *C.K. Thakker* and *R.V. Raveendran*, JJ. [Date of decision: 24-2-2006]

Devi Dass v. Mohan Lal, (1982) 1 SCC 495, distinguished on facts

[876] — Business or commercial premises — On facts, appellant landlord had only the shop in question in his name and he wanted to start his business independently — *Held, on evaluation of pleadings, documents and evidence on record, it is abundantly clear that appellant landlord has a genuine and bona fide need of the shop in question to carry on independent business* (Para 8). *Dhan Raj* v. *Nemi Chand*, (2011) 15 SCC 574: (2014) 2 SCC (Civ) 735: AIR 2012 SC Supp 411.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 5-7-2011]

Dhan Raj v. Nemichand, Civil Second Appeal No. 208 of 1999, decided on 30-9-2010 (Raj), reversed

[877] — Commercial premises — Shop needed by appellant landlord to establish his unemployed younger son in business of general merchant — Genuineness of need — Inference of — Elder son running business in a rented shop opposite disputed shop — *Held, prescribed authority rightly allowed appellant landlord's application for release of disputed shop on ground of bona fide requirement — High Court erred in giving too much emphasis to bald statement on affidavit filed by tenant's witness that landlord had attempted to sell disputed shop to him, when there was no supporting documentary evidence and there was denial of that fact by landlord — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 (13 of 1972), S. 21(1)(a) — U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Rules, 1972, R. 16(2)*

Merely for the reason that some witness has stated that the landlord attempted to sell the property, his statement cannot be said to be reliable, as has been believed by the High Court or the appellate court, unless such fact is supported with documentary proof. There appears no document on record to support the bald statement of the witness to dislodge the case of bona fide requirement of the shop claimed by the appellant for his son who was unemployed. (Para 12)

The elder son of the appellant was running a business as a tenant in a shop opposite to the disputed shop. Had it been found that the son for whom the landlord needed the shop had already got his own shop, it could have been said that the need for the landlord is not genuine, but in the present case if one of the sons was running his business that too in a rented accommodation, it cannot be said that the need of the landlord was not bona fide. The sons of the appellant are not supposed to starve on the street till the shop is actually vacated for them. (Para 13)

Thus the prescribed authority/trial court was justified in allowing the appellant landlord's application under Section 21(1)(*a*) of the U.P. Rent Act (13 of 1972) for release of the disputed shop in his favour. The appellate court has allowed the appeal of the tenant against the weight of the evidence on record and the High Court has erred in law in dismissing the writ petition of the appellant. (Para 14). *Krishna Kumar Rastogi* v. *Sumitra Devi*, (2014) 9 SCC 309: (2014) 5 SCC (Civ) 36: AIR 2014 SC 3635: (2014) 107 ALR 323: (2014) 143 AIC 133.

Bench Strength **2**. Coram: *S.J. Mukhopadhaya* and **Prafulla C. Pant**, JJ. [Date of decision: 20-8-2014]

Krishna Kumar Rastogi v. Addl. District Judge, Bijnor, Civil Misc. WP No. 34997 of 2000, decided on 12-10-2006 (All); Krishna Kumar Rastogi v. Addl. District Judge, Bijnor, Civil Misc. Review Application No. 225618 of 2006 in Civil Misc. WP No. 34997 of 2000, order dated 13-2-2012 (All), reversed

[878] — Comparative hardship — *Held, the respondent tenant has another ration shop in a village whereas appellant has no other shop from where he can carry on his business independently — Appellant landlord would suffer greater hardship if the said shop is not made available to him — Eviction order restored — Time granted to respondents to vacate the premises upon filing usual undertaking* (Paras 9 to 11). *Dhan Raj* v. *Nemi Chand*, (2011) 15 SCC 574: (2014) 2 SCC (Civ) 735: AIR 2012 SC Supp 411.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 5-7-2011]

Dhan Raj v. Nemichand, Civil Second Appeal No. 208 of 1999, decided on 30-9-2010 (Raj), reversed

[879] — Subsequent events — Settlement arrived at between parties — *Eviction suit filed by landlord on ground of bona fide need of demised premises for starting business by his wife — Wife died during pendency of appeal against eviction decree passed by trial court — First appellate court upheld judgment and decree passed by trial court — In second appeal, High Court upset concurrent finding of fact of trial court and first appellate court and held that subsequent demise of landlord's wife rendered bona fide need non-existent and defeated landlord's statutory right to evict tenant — Whether bona fide need ceased to prevail after death of landlord's wife during first appeal and whether in the circumstances High Court was justified in upsetting concurrent finding of fact — Ratio decidendi of three-Judge Bench decision of Supreme Court in* Pasupuleti Venkateswarlu, *(1975) 1 SCC 770 which holds the filed on question of consideration to be given to events which occurred subsequent to institution of eviction suit and disposal of appeal as also other related*

decisions considered — However, questions not decided in view of settlement arrived at between parties before Supreme Court in terms of which monthly rent increased and tenant permitted to continue to occupy tenanted premises for further period of 3 yrs. Baldev Krishan v. *Satya Narain*, (2013) 14 SCC 179: (2014) 2 SCC (Civ) 443: (2013) 101 ALR 274: (2013) 131 AIC 132.

Bench Strength **2**. Coram: *T.S. Thakur* and **Vikramajit Sen**, JJ. [Date of decision: 27-8-2013]

Satya Narain v. Baldev Krishan, Civil Regular Second Appeal No. 216 of 2010, order dated 11-3-2011 (Raj), reversed

Phool Rani v. Naubat Rai Ahluwalia, (1973) 1 SCC 688, held, overruled

8. COMPARATIVE HARDSHIP

See 'Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965)', Ss. 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii), (2011) 15 SCC 534: (2014) 2 SCC (Civ) 635

9. DELHI RENT CONTROL ACT, 1958 (59 OF 1958)

See also 'Generally', (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46

[880] — Ss. 15(1) & (7) — Striking off defence — Default in payment of rent — Order for payment of arrears of rent and future rent "month by month" by fifteenth day of each month — Tenant paying arrears of rent but neglecting to pay future rent until application was filed under S. 15(7) by respondent landlord for striking off tenant's defence — Disagreeing at the Bench as to whether appellant tenant's defence warranted being struck off in the facts of the case, matter referred to larger Bench — ***Per J.S. Khehar, J.****, this is not a case of a single lapse, but of persistent repeated and unrelenting default in payment of future rent — Appellant tenant did not comply with order for making payments towards future rent even for a single month before application under S. 15(7) was filed, no acceptable excuse has been tendered for delayed payment, hence, payments made later than that contemplated in Rent Controller's order is liable to be treated as payment in violation of Rent Controller's order — It is not possible to condone such indifference, insensitivity, disinterest and apathy to judicial directions — Judicial discretion was legitimately exercised by courts below, by striking out the defence of appellant tenant — Essential parameters governing exercise of discretion for striking off tenant's defence applied, to reach such conclusion —* ***Per Thakur, J. (disagreeing entirely on facts)****, what is important is that on the date of the order passed by trial court itself the entire arrears directed to be deposited by the petitioner tenant stood paid by him and so also on the date of the order passed by the trial court striking out his defence, rent for the entire intervening period and even beyond had been paid — These payments may require reconciliation, calculations and suitable adjustments against the months for which rent was payable but what cannot be disputed is that the amount which the petitioner was called upon to pay and which he has, pursuant to the direction of the trial court, paid or deposited has been at all relevant points of time in excess of what was payable to the landlord — Charge of contumacious failure and deliberate default in making the payment levelled against the tenant is, therefore, not well founded. Dina Nath* v. *Subhash Chand Saini*, (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46: (2014) 107 ALR 145: (2014) 138 AIC 104.

Bench Strength **2**. Coram: **T.S. Thakur**[2] and **J.S. Khehar**[1], JJ. [Date of decision: 16-4-2014]

[881] — S. 15(7) — Purpose — Legislative purpose is to curb the tendencies of tenants from abusing the legal process (*per Khehar, J.*) (Para 17.1). *Dina Nath* v. *Subhash Chand Saini*, (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46: (2014) 107 ALR 145: (2014) 138 AIC 104.

Bench Strength **2**. Coram: **T.S. Thakur**[2] and **J.S. Khehar**[1], JJ. [Date of decision: 16-4-2014]

[882] — S. 15(7) — Striking off defence — Default in payment of rent — Rent Controller's powers to strike out a tenant's defence — Discretionary and not mandatory — Discretion to be exercised keeping in mind nature of the non-compliance — *Held (**per curiam**), every violation in implementation of Rent Controller's direction(s) under S. 15(1) will not ipso facto lead to striking out defence of a tenant — If non-compliance is not serious, or is based on good reason, Rent Controller would not strike off tenant's defence — Only when non-compliance depicts irrational disregard to the order, or is repeated, or when no justification has been expressed for the same, or for other similar reason(s), Rent Controller is entitled to strike off defence of a tenant — In a given case even a single default depicting wilful, contumacious, or negligent and careless behaviour, could lead to the striking out of a tenant's defence — Striking out a tenant's defence is an exceptionally harsh step, which ought not be taken in a routine and casual manner — S. 15(7) cannot be so interpreted as to negate or frustrate the spirit of the legislation which aims at granting protection to tenants from eviction — Striking off the defence of the tenant to be an "exceptional step" warranted only when the tenant's conduct is seen to be negligent, deliberate or contumacious — However,*

*disagreeing on what sorts of violations of Rent Controller's directions warrant striking off defence (see Shortnote **B** in SCC), and disagreeing on facts (see Shortnote **C**), as to whether appellant tenant's conduct was contumacious, said issues of law and fact referred to larger Bench. Dina Nath* v. *Subhash Chand Saini*, (2014) 11 SCC 20: (2014) 4 SCC (Civ) 46: (2014) 107 ALR 145: (2014) 138 AIC 104.

Bench Strength **2**. Coram: **T.S. Thakur**[2] and **J.S. Khehar**[1], JJ. [Date of decision: 16-4-2014]

10. DENIAL OF TITLE OF LANDLORD

[883] — Denial of landlord's title in written statement and also in evidence by tenant in spite of several documents on record relating to ownership of landlord like registered sale deed, municipal tax receipts, ration card, etc. — *Held, the present case is not a simple case of denial of derivative title by person unaware of purchase of building by landlord — It is a denial of landlord's title by tenant and is a ground for eviction covered under S. 12(1)(c) of M.P. Accommodation Control Act, 1961 — On facts, held, High Court was not right in setting aside the concurrent finding of fact recorded by courts below that respondent tenant denied the title of appellant landlady — Eviction order restored — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 12(1)(c) and 32 — Transfer of Property Act, 1882, S. 111(g)(2)*

The appellant landlady purchased the building in which respondent tenant was occupying one room by a registered sale deed in 1991. The previous owners of the building informed the respondent tenant about this transfer and asked him to pay rent to the new landlady i.e. appellant. The respondent tenant though agreed to pay the rent but failed to pay it. In 2003, the appellant landlady filed a suit for eviction of the respondent tenant under the M.P. Accommodation Control Act, 1961 (the M.P. Act) on the grounds of non-payment of rent, denial of the appellant's title by respondent tenant, bona fide need for residential purpose and reconstruction of the building. The respondent tenant filed a written statement denying the title of the appellant landlady and claimed to be the tenant of the previous owners.

The trial court decreed the suit of appellant landlady under Section 12(1)(*c*) of the M.P. Act on the ground that the respondent tenant denied the title of the appellant. The decree was confirmed by the first appellate court. In second appeal filed by the respondent tenant, the High Court set aside the eviction decree passed by the courts below holding that in the facts of the case no decree under Section 12(1)(*c*) of the M.P. Act could be passed.

Setting aside the order of the High Court and restoring the eviction decree,

Held :

Under Section 111(*g*)(2) of the Transfer of Property Act, 1882, the lease is determined by forfeiture, if the lessee denies the lessor's title. So just is the above rule that in various rent control legislations such a ground is recognised and incorporated as a ground for eviction of a tenant either expressly or impliedly within the net of an act injurious to the interest of the landlord. The denial of the landlord's title or disclaimer of tenancy by the tenant is an act which is likely to affect adversely and substantially the interest of the landlord. It is, therefore, covered by Section 12(1)(*c*) of the M.P. Accommodation Control Act, 1961 (M.P. Act). (Paras 11 and 12)

There is a specific reference to the registered document under which the appellant landlady purchased the suit building from the earlier landlord in the plaint. Yet, in the written statement the respondent tenant denied the title of the appellant landlady. There are several documents on record relating to the ownership of the appellant landlady, apart from the registered sale deed, such as municipal tax receipts, ration card, etc. Yet, the respondent tenant refused to acknowledge the appellant's title. He denied it in his evidence. This is not a simple case of denial of derivative title by a person who did not know about the purchase of the building by the landlord. Even after going through the relevant documents relating to the appellant's title the respondent tenant feigned ignorance about it. The High Court has accepted that in his cross-examination the respondent tenant has stated that he was not accepting the appellant as his landlady. The High Court has, however, gone on to say that by this piece of evidence no decree of eviction can be passed against the respondent tenant under Section 12(1)(*c*) of the M.P. Act because the respondent will have no occasion to establish in what circumstances he denied the title of the appellant landlady. The High Court has further held that the respondent tenant was within the permissible limit in asking the appellant to produce documentary evidence about his title as a landlord. The High Court fell into a grave error in drawing such a conclusion. Even denial of a landlord's title in the written statement can provide a ground for eviction of a tenant. It is settled law that it is not necessary that the denial of title by the landlord should be anterior to the institution of eviction proceedings. (Para 14)

The High Court has expressed that the respondent tenant was justified in asking the appellant

landlady to produce the documents. Implicit in this observation is the High Court's view that the respondent tenant could have in an eviction suit got the title of the appellant landlady finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. (Para 15)

It is well settled that the High Court should not interfere with a concurrent finding of fact unless it is perverse. In the present case, there is no such perversity in the concurrent finding of fact returned by the courts below warranting the High Court's interference. Therefore, the High Court was wrong in setting aside the concurrent finding of fact recorded by the courts below that the respondent tenant had denied the title of the appellant landlady. The present case is covered by Section 12(1)(*c*) of the M.P. Act. The impugned judgment of the High Court is set aside and eviction decree passed by the trial court and confirmed by the first appellate court under Section 12(1)(*c*) of the M.P. Act is restored. (Paras 9, 20 and 21). *Keshar Bai* v. *Chhunulal*, (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127: AIR 2014 SC 1394.

Bench Strength **2**. Coram: **Ranjana P. Desai** and *Jasti Chelameswar*, JJ. [Date of decision: 7-1-2014]

Devasahayam v. P. Savithramma, (2005) 7 SCC 653; Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375; Majati Subbarao v. P.V.K. Krishna Rao, (1989) 4 SCC 732; Bhogadi Kannababu v. Vuggina Pydamma, (2006) 5 SCC 532; Deep Chandra Juneja v. Lajwanti Kathuria, (2008) 8 SCC 497; Yash Pal v. Ram Lal, (2005) 12 SCC 239; Firojuddin v. Babu Singh, (2012) 3 SCC 319: (2012) 2 SCC (Civ) 142, followed

Mohd. Nooman v. Mohd. Jabed Alam, (2010) 9 SCC 560: (2010) 3 SCC (Civ) 880, limited to facts of the case

Chhunulal v. Kesharbai, (2011) 2 MPLJ 180, reversed

[884] — Eviction on ground of — Held, can be sought even when denial is made subsequent to filing of eviction proceedings — *It is not necessary that denial of landlord's title by tenant should be anterior to institution of eviction proceedings — Hence, denial of title of landlord in written statement furnishes ground for eviction of tenant — M.P. Accommodation Control Act, 1961 (41 of 1961), S. 12(1)(c) — Transfer of Property Act, 1882, S. 111(g)(2). Keshar Bai* v. *Chhunulal*, (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127: AIR 2014 SC 1394.

Bench Strength **2**. Coram: **Ranjana P. Desai** and *Jasti Chelameswar*, JJ. [Date of decision: 7-1-2014]

Devasahayam v. P. Savithramma, (2005) 7 SCC 653; Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375; Bhogadi Kannababu v. Vuggina Pydamma, (2006) 5 SCC 532; Majati Subbarao v. P.V.K. Krishna Rao, (1989) 4 SCC 732; Deep Chandra Juneja v. Lajwanti Kathuria, (2008) 8 SCC 497; Yash Pal v. Ram Lal, (2005) 12 SCC 239; Firojuddin v. Babu Singh, (2012) 3 SCC 319: (2012) 2 SCC (Civ) 142, followed

Mohd. Nooman v. Mohd. Jabed Alam, (2010) 9 SCC 560: (2010) 3 SCC (Civ) 880, limited to facts of the case

Chhunulal v. Kesharbai, (2011) 2 MPLJ 180, reversed

11. EVICTION

[885] — Compromise — Bona fide requirement — Tenant agreeing to vacate within period prescribed by court — *Order granting leave to defend to respondent/tenant by High Court set aside — Respondent/tenant directed to vacate up to fixed date subject to payment of arrears of rent and compensation for use and occupation — CPC, 1908, Or. 23* (Paras 2 to 4). *Nooruddin Ahmed* v. *Mohd. Ilyas*, (2013) 14 SCC 757: (2014) 3 SCC (Civ) 526: (2013) 197 DLT 307.

Bench Strength **2**. Coram: *T.S. Thakur* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 7-2-2013]

Mohd. Illyas v. Nooruddin, (2011) 184 DLT 590, reversed

12. EVICTION DECREE/ORDER

See also CIVIL PROCEDURE CODE, 1908, Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

[886] — Execution — Directions issued to ensure prompt delivery of possession — *Transfer of Property Act, 1882, S. 108(q). Arun Kumar Keshari* v. *Ganesh*, (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745.

Bench Strength **2**. Coram: *B.N. Agrawal* and *G.S. Singhvi*, JJ. [Date of decision: 14-9-2009]

[887] — Extension of time for vacating premises — *Dispute between R-1 Municipality and Respondents 2 & 3 regarding ownership of suit premises — Application filed by Respondents 2 and 3 for temporary injunction, dismissed — Under these circumstances, petitioner tenant sought time for vacating premises — Accordingly, Supreme Court granted him time to vacate premise on condition that he would give undertaking therefor* (Paras 7 and 8). *Ram Chander* v. *Nagar Nigam*, (2014) 1 SCC 199: (2014) 1 SCC (Civ) 62.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and *Swatanter Kumar*, JJ. [Date of decision: 9-6-2011]

Ramchandra v. Nagar Nigam, Special Application Writ No. 1289 of 2006, order dated 27-5-2011 (Raj), affirmed

[888] — When may be based on compromise decree — Reiterated, the same is permissible if in addition to the consent of the tenant, one of the statutorily stipulated grounds for eviction exists in the facts of the case — *In the present case, as tenant was in arrears of rent such statutory ground for eviction was available — Hence original compromise decree restored and eviction directed in terms thereof*

In the present case, the appellant landlord filed a civil suit under Section 12(1)(*a*) of the M.P. Accommodation Control Act, 1961 for eviction of the respondent tenant and recovery of arrears of rent. Subsequently, a compromise memo signed by both the parties came to be filed under which the respondent acknowledged his liability to pay arrears of rent to the appellant to the tune of Rs 11,710 and also costs quantified to Rs 4000. The respondent tenant agreed to pay the said amount within a period of six months. It was also specifically agreed that if the respondent tenant violated any of the aforesaid conditions, the appellant would be entitled to get the vacant possession of the suit accommodation from the respondent. Thus, the civil suit was decreed in terms of the said compromise. Thereafter, the appellant landlord filed an application for execution of the compromise decree alleging that the respondent failed to fulfil his obligations arising out of the compromise decree and, thus, he claimed to recover possession of the premises. Pursuant to the order of the executing court granting further time to the respondent to deposit the amount, the respondent paid the entire amount due under the compromise decree in the executing court. In view of the said deposit, having regard to Section 13 of the M.P. Accommodation Control Act, the executing court observed that the compromise decree was void in respect of eviction relief and no such eviction could be ordered contrary to the provisions of the M.P. Accommodation Control Act for default in payment of rent. Aggrieved by the said order, the appellant landlord approached the High Court by way of a civil revision petition. The High Court dismissed the revision. Hence, the present appeal.

The High Court dismissed the case of the appellant landlord on three grounds: (*i*) that the appellant need not have entered into a compromise which led to the decree as there was a serious dispute about the title of the appellant, (*ii*) that when the execution petition was filed by the appellant landlord, the executing court granted 15 days' time to the respondent tenant to pay the balance of the arrears of rent, but the appellant did not choose to challenge the said order and therefore such failure of the appellant landlord implied that the appellant had acquiesced to the said order, and (*iii*) in view of the fact that the respondent tenant eventually deposited the arrears of rent, his possession was required to be protected in view of Sections 12(3) and 13(5) of the M.P. Accommodation Control Act, 1961.

Allowing the appeal and directing eviction,

Held :

Section 13(5) of the M.P. Accommodation Control Act, 1961 declares that if a tenant makes deposit or payment as required under sub-section (1) or (2) of the said section, no decree or order for recovery of possession of the accommodation can be passed. A reading of Section 13 of the said Act clearly indicates that the payment or the deposit of rent into the court by the judgment-debtor (tenant) is contemplated only during the pendency of the suit for eviction or an appeal (by the tenant) against a decree or order of eviction. Section 13 has no application to the execution proceedings of a decree for eviction. The language of Section 13(1) is very clear and explicit in this regard. The court could not read into Section 13, a possibility of enabling the judgment-debtor (tenant) to protect his possession by making the payment during the execution proceedings in spite of the fact that he had already been adjudged to be in default of payment of the rent to the landlord. Such an interpretation of Section 13 would be wholly destructive of Section 12(1)(*a*) of the aforesaid Act. (Paras 20 to 23)

A landlord whose right to seek the eviction of his tenant is restricted by a statute (to the grounds specified in the statute) cannot successfully evict the tenant only on the basis of a compromise decree passed in a suit for eviction of the tenant. Apart from the consent of the tenant, one of the statutorily stipulated grounds rendering the tenant liable for eviction must necessarily exist for the validity of such a decree. (Para 24)

In the case on hand the tenant was clearly in arrears of the rent which fact is acknowledged by the compromise memo signed by the tenant which was incorporated in the decree. Thus, the statutorily stipulated ground rendering the tenant liable for eviction does exist in the present case, and stands incorporated in the compromise decree. Hence, the execution petition filed by the appellant landlord is allowed. The executing court will now take necessary steps for evicting the respondent from the disputed premises and handing over the possession of the same to the appellant. (Para 25). *Shivshankar Gurgar* v. *Dilip*, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92: AIR 2014 SC 1182: (2014) 2 MPLJ 663: (2014) 103 ALR 232: (2014) 135 AIC 202.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Jasti Chelameswar**, JJ. [Date of decision: 3-1-2014]

Nai Bahu v. Lala Ramnarayan, (1978) 1 SCC 58, explained and distinguished on facts

Shivshankar Gurgar v. Dilip, Civil Revision No. 173 of 2007, decided on 28-10-2010 (MP), reversed

13. EVICTION SUIT/TRIAL

[889] — Eviction suit under Rent Control Act — Maintainability — Matters/Issues/Questions at large in such suit — Jurisdiction of Rent Controller/Court under Rent Control Act — Eviction decree — Existence of landlord-tenant relationship between parties sine qua non for grant of, where eviction suit is filed under Rent Control Act — Hence enquiry in such suit should be limited to existence of landlord-tenant relationship — If such relationship is found to be not existing, eviction suit is liable to be dismissed — *Question of plaintiff's title based on his purchase of suit property or adverse possession thereof by defendant is beyond scope of enquiry in eviction suit under Rent Control Act — However, question of title can be considered incidentally, but only to ascertain bona fides of denial of plaintiff's title by defendant — Jurisdiction under Rent Control Act to try eviction suit is limited to grounds specified therein only, except where alternative remedy is permissible thereunder — Position is different where eviction suit is filed under Transfer of Property Act, in which case civil court can grant equitable relief under Or. 7 R. 7 CPC on basis of title of plaintiff even in absence of landlord-tenant relationship — On facts held, plaintiff having failed to establish landlord-tenant relationship, defendant not liable for eviction — However, trial court's finding that defendant had perfected his title by adverse possession was beyond its jurisdiction and High Court also erred in affirming trial court's judgment to that extent — Under these circumstances, plaintiff entitled to file fresh suit for recovery of possession — CPC, 1908, Or. 7 R. 7 — Transfer of Property Act, 1882, Ss. 111 and 105 — M.P. Accommodation Control Act, 1961 (41 of 1961), Ss. 12(1)(a) & (e) — Specific Relief Act, 1963, S. 5*

The appellant-plaintiff instituted a suit in 1986 in the civil court for eviction of the respondent-defendant from the suit premises and for mesne profits under the M.P. Accommodation Control Act, 1961. The case of the plaintiff was that he had purchased the suit property vide a registered sale deed dated 1-4-1976 on payment of sale consideration of Rs 4500 to the vendor. The defendant was in possession of the property as a tenant under the earlier owner in terms of an oral tenancy. Despite the plaintiff having informed the defendant about the purchase of the property by him and despite assurance given by the defendant to pay the rent to him, the defendant defaulted which led to termination of the tenancy w.e.f. 31-1-1978.

In the written statement the defendant disputed the right, title and interest of the plaintiff, denied the landlord-tenant relationship between them and urged that the plaintiff had no right under the M.P. Accommodation Control Act to file the suit for eviction. It was set forth by the defendant that he was never a tenant under the previous owner, that the premises were in dilapidated condition and a banjar land, which was in his uninterrupted and peaceful possession for 18-19 years to the knowledge of the original owner and over which he had constructed a gumti and fixed a gate and commenced furniture business without any objection of the original owner. It was also set forth that when the original owner desired to sell the premises, he was put to notice about the ownership of the defendant but he sold the property without obtaining sale consideration with the sole intention to obtain possession by colluding with the appellant-plaintiff.

The trial court dismissed the suit on the basis of its findings that the sale deed executed by the original owner in favour of the appellant was without any sale consideration; that the relationship of landlord and tenant between the parties had not been established; and that the respondent had become the owner of the suit accommodation on the basis of adverse possession. The first appellate court, reappreciating the evidence on record and considering the submissions raised at the Bar, held that the appellant-plaintiff had not been able to prove the relationship of landlord and tenant; that the conclusion arrived at by the trial court that the sale deed due to absence of sale consideration was invalid, was neither justified nor correct; and that there being no clinching evidence to establish that the defendant had perfected his title by adverse possession the finding recorded by the trial Judge on that score was indefensible.

In the second appeal preferred by the defendant, the Single Judge of the High Court adverted to Sections 12(1)(*a*) and 12(1)(*e*) of the 1961 Act and came to hold that once the plaintiff had failed to establish the relationship of landlord and tenant which is the sine qua non in a suit for eviction, the plaintiff could not have fallen back on his title to seek eviction of the tenant. The Single Judge dislodged the judgment and decree passed by the lower appellate court and affirmed that of the trial court.

Allowing the appeal,

Held :

There is a difference in exercise of jurisdiction when the civil court deals with a lis relating to evic-

tion brought before it under the provisions of the Transfer of Property Act, 1882 where the equitable relief under Order 7 Rule 7 could be granted and under any special enactment pertaining to eviction on specified grounds. The sine qua non for granting the relief in the suit for eviction under the Rent Control Act (M.P. Accommodation Control Act in this case), is that between the plaintiffs and the defendant the relationship of "landlord and tenant" should exist. The scope of the enquiry before the courts is limited to the question: as to whether the grounds for eviction specified in the Rent Control Act have been made out under the Rent Control Act. A Court of Rent Controller cannot pass a decree for eviction on a ground other than the one specified in the Rent Control Act. The question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" under the Rent Control Act. However if alternative relief is permissible within the ambit of the Rent Control Act, the position would be different. It would depend upon the scheme of the Rent Control Act whether an alternative relief is permissible under the Rent Control Act. That apart, the court can decide the issue of title if a tenant disputes the same and the only purpose is to see whether the denial of title of the landlord by the tenant is bona fide in the circumstances of the case. (Paras 25 to 31)

Thus, a limited enquiry pertaining to the status of the parties i.e. relationship of landlord and tenant could have been undertaken in the eviction suit filed under the Rent Control Act by the appellant. However, once a finding was recorded that there was no relationship of landlord and tenant under the scheme of the Act, there was no necessity to enter into an enquiry with regard to the title of the plaintiff based on the sale deed or the title of the defendant as put forth by way of assertion of long possession. Similarly, when the Single Judge of the High Court, upheld the finding of the trial court that there was no relationship of landlord and tenant between the parties, there was no warrant to reappreciate the evidence to overturn any other conclusion. The High Court is justified to the extent that no equitable relief could be granted in a suit instituted under the Rent Control Act. But, it has committed an illegality by affirming the judgment and decree passed by the trial Judge because by such affirmation the defendant becomes the owner of the premises by acquisition of title by prescription. When such an enquiry could not have been entered upon and no finding could have been recorded and, in fact, the High Court has correctly not dwelled upon it, the impugned judgment to that extent is vulnerable and accordingly, the said affirmation is set aside. (Para 31)

The conception of adverse possession fundamentally contemplates a hostile possession by which there is a denial of title of the true owner. By virtue of remaining in possession the possessor takes an adverse stance to the title of the true owner. In fact, he disputes the same. A mere possession or user or permissive possession does not remotely come near the spectrum of adverse possession. Possession to be adverse has to be actual, open, notorious, exclusive and continuous for the requisite frame of time as provided in law so that the possessor perfects his title by adverse possession. Adverse possession, as a right, does not come in aid solely on the base that the owner loses his right to reclaim the property because of his wilful neglect but also on account of the possessor's constant positive intent to remain in possession. (Paras 34 and 37)

Thus the judgment of the High Court is affirmed only to the extent that as the relationship of landlord and tenant was not established the defendant was not liable for eviction under the Act. The issue of right, title and interest is definitely open. The appellant is required to establish the same in a fresh suit as required under law and the defendant is entitled to resist the same by putting forth all his stand and stance including the plea of adverse possession. The fulcrum of the matter is whether the institution of the instant suit for eviction under the Rent Control Act would arrest running of time regard being had to the concept of adverse possession as well as the concept of limitation. (Para 33)

The Acts of Limitation fundamentally are principles relating to "repose" or of "peace". The fundamental policy behind limitation is that if a person does not pursue his remedy within the specified time-frame, the right to sue gets extinguished. In the present case the pivotal point is whether a good cause, because a litigant cannot deprive the benefit acquired by another in equity by his own inaction and negligence, as assumed by the plaintiff, has been lost forever as he has not been able to prove the relationship of landlord and tenant in a suit for eviction which includes delivery of possession. (Paras 38 and 39)

The appellant had filed the suit for eviction though under the Rent Control Act. The relief sought in the plaint was for delivery of possession. It was not a forum that lacked inherent jurisdiction to pass a decree for delivery of possession. It showed the intention of the plaintiff to act and to take back the possession. Under these circumstances, after the institution of the suit, the time for

acquiring title by adverse possession has been arrested or remained in a state of suspension till the entire proceedings arising out of suit are terminated. If by the date of present suit the defendant had already perfected title by adverse possession that would stand on a different footing. (Para 44)

Accordingly, the appellant-plaintiff is permitted to institute a fresh suit for title and recovery of possession and such other reliefs as the law permits within a period of two months from the date of this judgment. (Para 45). *Tribhuvanshankar* v. *Amrutlal*, (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206: (2014) 2 MPLJ 648: (2014) 106 ALR 160: (2014) 1 LW 451.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 13-11-2013]

Rajendra Tiwary v. Basudeo Prasad, (2002) 1 SCC 90, followed

Bhagwati Prasad v. Chandramaul, AIR 1966 SC 735; Biswanath Agarwalla v. Sabitri Bera, (2009) 15 SCC 693: (2009) 5 SCC (Civ) 695, distinguished

Sultan Jehan Begum v. Gul Mohd., AIR 1973 MP 72; Sultan Khan v. State of M.P., 1991 MPLJ 81, held, approved

Halsbury's Laws of England, 4th Edn., Vol. 28, Para 605, relied on

Amrutlal v. Tribhuvan Shankar, Second Appeal No. 33 of 1995, decided on 8-2-2008 (MP), partly affirmed and partly reversed

[890] — Jurisdiction/Proper forum — Jurisdiction conferred on Civil Judge under S. 6 of State Tenancy Act, 1997 to decide dispute as to recovery of possession of tenanted premises by landlord from tenant — Invocation of — Overriding effect of S. 6 of State Tenancy Act over tenancy agreement containing arbitration clause — *Arbitration clause in tenancy agreement providing for any dispute arising out of tenancy agreement to be settled by arbitrator in accordance with provisions of Arbitration and Conciliation Act, 1996 — Reference of present dispute to arbitration pursuant to said arbitration agreement, held, not permissible in view of bar contained in this regard under S. 6 of State Tenancy Act, 1997 Act concerned, which prescribed that notwithstanding anything to the contrary contained in any contract, the dispute as to recovery of possession of premises by landlord from tenant had to be decided only by the Civil Judge having jurisdiction under the Tenancy Act — Consequently, judgment of High Court referring the parties to arbitration in present matter, held, not sustainable — Hence, set aside — W.B. Premises Tenancy Act, 1997 (37 of 1997), S. 6 — Arbitration and Conciliation Act, 1996, S. 8 — Specific Relief Act, 1963, S. 5. Ranjit Kumar Bose* v. *Anannya Chowdhury*, (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135: AIR 2014 SC 1534: (2014) 103 ALR 669: (2014) 136 AIC 258: (2014) 2 Cal LJ 141.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 7-3-2014]

Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums, (2003) 6 SCC 503; Agri Gold Exims Ltd. v. Sri Lakshmi Knits & Wovens, (2007) 3 SCC 686; Magma Leasing & Finance Ltd. v. Potluri Madhavilata, (2009) 10 SCC 103: (2009) 4 SCC (Civ) 57, distinguished on facts

Anannya Chowdhury v. Ranjit Kr. Bose, (2010) 3 CHN 64: (2010) 4 ICC 584, reversed

[891] — Maintainability — Award under S. 11 of Land Acquisition Act, 1894 already passed in respect of tenanted premises (open land) but possession not taken under S. 16 of 1894 Act — Held, suit filed by landlord against existing tenant after passing of award is maintainable — As per S. 16 of LA Act, 1894, till possession of land is not taken, landlord is not divested of right, title and interest therein — *Stand of tenant that after passing of award landlord ceased to have any concern with the land is self-defeating when tenant was continuing to pay rent to landlord even after award — Land Acquisition Act, 1894, Ss. 16 and 11 — Transfer of Property Act, 1882, Ss. 111(c), 116, 111(h) and 106. Sheela Jawarlal Nagori* v. *Kantilal Nathmal Baldota*, (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122: (2014) 117 Cut LT 1005: (2014) 104 ALR 493: (2014) 137 AIC 120: (2014) 4 LW 782.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Madan B. Lokur**, JJ. [Date of decision: 25-3-2014]

Dhanraj Nihalchand Oswal v. Kantilal Nathmal Baldota, WP (C) No. 2089 of 2012, order dated 24-10-2013 (Bom), affirmed

36518 of 2013, order dated 4-2-2014 (SC), referred to

[892] — Question of title of landlord — Held, issue regarding title to property cannot be decided finally in eviction proceedings, though the same may be incidentally gone into — *CPC, 1908, S. 9 — Specific Relief Act, 1963, Ss. 34 and 35*

The High Court has expressed that the respondent tenant was justified in asking the appellant landlady to produce the documents. Implicit in this observation is the High Court's view that the respondent tenant could have in an eviction suit got the title of the appellant landlady finally adjudicated upon. There is a fallacy in this reasoning. In eviction proceedings the question of title to the properties in question may be incidentally gone into, but cannot be decided finally. (Para 15). *Keshar Bai* v. *Chhunulal*, (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127: AIR 2014 SC 1394.

Bench Strength **2**. Coram: **Ranjana P. Desai** and *Jasti Chelameswar*, JJ. [Date of decision: 7-1-2014]

Bhogadi Kannababu v. Vuggina Pydamma, (2006) 5 SCC 532, followed

Mohd. Nooman v. Mohd. Jabed Alam, (2010) 9 SCC 560: (2010) 3 SCC (Civ) 880, limited to facts of the case

14. EXECUTION

See 'Eviction decree/order', (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745

15. EXECUTION OF EVICTION DECREE/ORDER/DELIVERY OF POSSESSION

— Execution of compromise eviction decree *See also* 'Eviction Decree/Order', (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465

See CIVIL PROCEDURE CODE, 1908, S. 47 and Or. 21 & Or. 23 R. 3, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— Ss. 148, 47 and Or. 23 R. 3, (2014) 2 SCC 465

16. GOA, DAMAN AND DIU MUNDKARS (PROTECTION FROM EVICTION) ACT, 1975 (1 OF 1976)

— Ss. 4 and 13 *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

17. HARYANA URBAN (CONTROL OF RENT AND EVICTION) ACT, 1973 (11 OF 1973)

— S. 11 *See* 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', Ss. 15(6) and 13, (2013) 11 SCC 464: (2014) 1 SCC (Civ) 585

— S. 15 *See also* 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', S. 15(6), (2014) 9 SCC 102: (2014) 4 SCC (Civ) 747

— Ss. 15 and 15(6) *See* 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

[893] — S. 15(6) — Revision — High Court's power (as revisional authority) to reappreciate the evidence and interfere with findings of fact of first appellate court — *In view of conflicting views of coordinate three-Judge Benches of Supreme Court in* Rukmini Amma Saradamma, *(1993) 1 SCC 499 and* Ram Dass, *(1988) 3 SCC 131, matter needs consideration by a larger Bench since this question arises in a large number of cases as similar provisions conferring power of revision exists in various rent control and other legislations — Order passed accordingly — Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), S. 15 — Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), Ss. 18 and 20 — T.N. Buildings (Lease and Rent Control) Act, 1960 (18 of 1960), Ss. 23 and 25 — Constitution of India, Art. 141. Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh*, (2014) 9 SCC 102: (2014) 4 SCC (Civ) 747.

Bench Strength **2**. Coram: *Markandey Katju* and *A.K. Ganguly*, JJ. [Date of decision: 27-8-2009]

Hindustan Petroleum Corpn. Ltd. v. Balwant Singh Chaudhary, SLP (C) No. 12392 of 2004, order dated 17-9-2004 (SC), modified

[894] — Ss. 15(6) and 13 — No permission of Rent Controller taken to convert premises into non-residential — *Held, in view of S. 11 of the Act, High Court erred in holding that disputed premises was non-residential — Hence, impugned judgment set aside and the order of the first appellate court restored — Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), S. 11. Ram Prakash* v. *Dev Raj*, (2013) 11 SCC 464: (2014) 1 SCC (Civ) 585.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Dipak Misra*, JJ. [Date of decision: 22-3-2012]

Dev Raj v. Ram Parkash, Civil Revision No. 3406 of 1996, decided on 24-9-2010 (P&H), reversed

18. JURISDICTION

— Denial of title of landlord — Effect on jurisdiction of Rent Control Authorities/Court *See* CIVIL PROCEDURE CODE, 1908, Ss. 9, 11 and 47, (2014) 4 SCC 534: (2014) 2 SCC (Civ) 588

[895] — Determination — Proper manner — Jurisdiction of Small Cause Court depending on character of lease — *Though said issue can prima facie be assumed from the averments made in plaint (as was done by High Court and Small Cause Court) but ultimately a finding of fact must be made by examining the conditions of lease and other admissible evidence which may be adduced by parties — Said issue is an issue of fact — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 28 — Provincial Small Cause Courts Act, 1887, S. 26*

Disposing of the appeal,

Held :

Despite the fact that the Small Cause Court as also the High Court may be correct in arriving at the findings that on the face of the averments made in the plaint, the Small Cause Court had the jurisdiction to entertain the plaint, but ultimately a finding of fact as to whether the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 would be applicable or not must be determined in terms of the conditions of the lease dated 1-11-2004 as also on the basis of other admissible evidence which may be adduced by the parties. The lease deed has not been filed in the present appeal. Therefore, the matter must be considered afresh by the Judge of Small Cause Court. (Paras 8 to 11)

One of the questions which indisputably would arise for consideration of the Small Cause Court would be as to whether having regard to the nature and character of the demise made in favour of the

appellant by the respondent herein, the same would constitute transfer of the premises together with the machineries installed therein or it was principally a demise of the machinery and incidentally the premises had also been transferred. (Para 5). *B.P. Extractions* v. *Shankar Lal Gulab Chand & Co.*, (2011) 15 SCC 788: (2014) 2 SCC (Civ) 759.

Bench Strength **2**. Coram: *S.B. Sinha* and *P.K. Balasubramanyan*, JJ. [Date of decision: 6-1-2006]

19. KERALA BUILDINGS (LEASE AND RENT CONTROL) ACT, 1965 (2 OF 1965)

[896] — Ss. 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii) — Eviction petition under — Tenant acquiring another building in same locality suitable for his business — Appellate Authority allowing appeal of landlord ordering eviction reversing findings of Rent Controller, affirmed — *Held, High Court erred in reversing findings of Rent Control Appellate Authority — High Court's judgment, erroneous and unsustainable, therefore, set aside — Respondent tenants granted one year's time for vacating the premises upon filing the usual undertaking* (Paras 9 and 11). *Kannachankandy Chandran* v. *Peetikakandy Achuthan*, (2011) 15 SCC 534: (2014) 2 SCC (Civ) 635: AIR 2012 SC Supp 398.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Deepak Verma*, JJ. [Date of decision: 11-4-2011]

— Ss. 18 and 20 *See* 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', S. 15(6), (2014) 9 SCC 102: (2014) 4 SCC (Civ) 747

See also 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

20. LANDLORD-TENANT RELATIONSHIP

[897] — Denial of title of landlord — Estoppel — Tenant attorning to new landlord — Tenant's denial or disclaimer of title of transferee of landlord through sale of the reversion — *Held, on sale of the premises when tenant acknowledges the purchaser as his landlord, and pays rents to him, he cannot thereafter say that such sale in favour of his landlord is sham — Only exception is, where tenant pleads and proves when he attorned, he was labouring under a mistake or ignorance as to material facts affecting title of the new landlord — In present case, there was no pleading or proof by tenants to bring themselves within exception to general principle of estoppel — Evidence Act, 1872, S. 116 — Transfer of Property Act, 1882, Ss. 109 and 111(g)(2)* (Para 9). *V.M. Salim* v. *Fathima Muhammed*, (2011) 15 SCC 756: (2014) 2 SCC (Civ) 749: (2006) 3 KLT 813.

Bench Strength **3**. Coram: *Y.K. Sabharwal*, *C.J.* and *C.K. Thakker* and *R.V. Raveendran*, JJ. [Date of decision: 24-2-2006]

Spencer Bower and Turner: Estoppel by Representation (3rd Edn.), referred to

21. M.P. ACCOMMODATION CONTROL ACT, 1961 (41 OF 1961)

— Ss. 12(1)(a) & (e) *See* 'Eviction Suit/Trial', (2014) 2 SCC 788: (2014) 2 SCC (Civ) 206

— Ss. 12(1)(a) and 13 *See* CIVIL PROCEDURE CODE, 1908, S. 47 and Or. 21 & Or. 23 R. 3, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

— S. 47 and Or. 23 R. 3, (2014) 2 SCC 465

— Ss. 33, 2(2) & (14) and Or. 20, (2014) 2 SCC 465

— S. 12(1)(c) *See also* 'Denial of Title of Landlord', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

[898] — S. 12(1)(c) — Denial of landlord's title or disclaimer of tenancy by tenant — Held, is a ground for eviction of tenant covered by S. 12(1)(c) — Same is an act likely to affect adversely and substantially the interest of landlord — *Transfer of Property Act, 1882, S. 111(g)(2) — Evidence Act, 1872, S. 116. Keshar Bai* v. *Chhunulal*, (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127: AIR 2014 SC 1394.

Bench Strength **2**. Coram: **Ranjana P. Desai** and *Jasti Chelameswar*, JJ. [Date of decision: 7-1-2014]

Devasahayam v. P. Savithramma, (2005) 7 SCC 653; Sheela v. Firm Prahlad Rai Prem Prakash, (2002) 3 SCC 375; Majati Subbarao v. P.V.K. Krishna Rao, (1989) 4 SCC 732; Bhogadi Kannababu v. Vuggina Pydamma, (2006) 5 SCC 532; Deep Chandra Juneja v. Lajwanti Kathuria, (2008) 8 SCC 497; Yash Pal v. Ram Lal, (2005) 12 SCC 239; Firojuddin v. Babu Singh, (2012) 3 SCC 319: (2012) 2 SCC (Civ) 142, followed

Mohd. Nooman v. Mohd. Jabed Alam, (2010) 9 SCC 560: (2010) 3 SCC (Civ) 880, limited to facts of the case

Chhunulal v. Kesharbai, (2011) 2 MPLJ 180, reversed

— Ss. 12(1)(c) and 32 *See* 'Denial of Title of Landlord', (2014) 11 SCC 438: (2014) 4 SCC (Civ) 127

— Ss. 13(1), (5) and 12(1)(a) *See* 'Arrears of Rent/Default/Tender of Rent/Striking off defence', (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

See also CIVIL PROCEDURE CODE, 1908, Ss. 148, 47 and Or. 23 R. 3, (2014) 2 SCC 465: (2014) 2 SCC (Civ) 92

22. MAHARASHTRA RENT CONTROL ACT, 1999 (18 OF 2000)

— S. 3(1)(b) *See* 'Public premises' — Eviction, (2014) 13 SCC 291: (2014) 5 SCC (Civ) 712

See also PRACTICE AND PROCEDURE — 'Res judicata', (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387

— S. 7(15)(a)(ii) *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 2(e), 2(g), 4 and 5, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

[899] — S. 33 — Jurisdiction of courts under — Secured asset in possession of tenant of borrower, where (i) tenancy is created prior to mortgage which created the secured asset, or (ii) tenancy is created after the mortgage vide S. 65-A TPA but prior to receipt of S. 13(2) SARFAESI Act notice by borrower — Protection of possession of any such tenancy under S. 33 of 1999 Act in an action for eviction under SARFAESI Act, 2002 — Proper mode and forum for — *Held, as per S. 34 of SARFAESI Act, 2002, injunction cannot be granted by courts under S. 33 of 1999 Act when action is taken by secured creditor or CMM/DM under SARFAESI Act to evict a tenant under a tenancy of either type (i) or (ii), above — Furthermore, S. 33 of 1999 Act only confers jurisdiction on courts thereunder to decide disputes between landlord and tenant and not disputes between tenant under landlord who is a borrower in respect of secured assets covered by SARFAESI Act, 2002 and secured creditor of such landlord — Only remedy against action for eviction under SARFAESI Act, 2002 is under Arts. 226 and 227 of Constitution — Proper mode for eviction of such tenant of type (i) or (ii), above, by the secured creditor of the borrower is given in detail in Shortnote C — Constitution of India, Arts. 226 and 227 — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 34, 35, 13 and 14. Harshad Govardhan Sondagar* v. *International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1: (2014) 184 Comp Cas 199: (2014) 5 CTC 546: (2014) 3 KLT 357: (2014) 5 LW 456.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 3-4-2014]

Transcore v. Union of India, (2008) 1 SCC 125: (2008) 1 SCC (Civ) 116, distinguished

International Asset Reconstruction Co. (P) Ltd. v. Union of India, (2011) 5 Bom LR 3080: AIR 2011 Bom 163, reversed

Trade Well v. Indian Bank, 2007 Cri LJ 2544 (Bom), disapproved

23. PRACTICE AND PROCEDURE

— Res judicata *See* PRACTICE AND PROCEDURE — 'Res judicata', (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387

24. PUBLIC PREMISES

— Public Premises Act, 1971 — Occupants to whom applicable *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 15, 2(e) & (g) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

(a) Eviction

[900] — Applicability of Public Premises Act, 1971 — Rent Control Act not applicable to public limited companies having paid-up share capital of rupees one crore or more — *Respondent NRC Ltd. having a paid-up share capital of more than one crore rupees — Notice of eviction issued on 26-6-2007 i.e. much after Maharashtra Rent Control Act, 1999 came into force on 31-3-2000 — However, Rent Control Act not applicable to public limited companies having paid-up share capital of rupees one crore or more — Hence held, protective umbrella of State Rent Control Act which was available to NRC Ltd. would not be available to it beyond 31-3-2000 — Consequently, provisions of 1971 Act would clearly apply for purpose of eviction of unauthorised occupants — Action initiated by appellant Bank for eviction of respondent sustainable — Maharashtra Rent Control Act, 1999 (18 of 2000), S. 3(1)(b) — Public Premises (Eviction of Unauthorised Occupants) Act, 1971*

An order of eviction dated 26-6-2007 was passed by the Estate Officer of the appellant Bank against the respondent NRC Ltd. which was confirmed by the city civil court as well as the High Court. While dismissing the SLP filed thereagainst, the Supreme Court vide order dated 19-9-2013, considering the number of employees engaged in their office, granted time till the end of December 2014 to vacate the premises.

The instant contempt petition was filed alleging that said order dated 19-8-2013 passed by the Supreme Court was not complied with.

Allowing the petition, the Supreme Court held as above. *Central Bank of India* v. *National Rayon Corpn. Ltd.*, (2014) 13 SCC 291: (2014) 5 SCC (Civ) 712: (2014) 104 ALR 503: (2014) 137 AIC 125: (2014) 2 Cal LJ 220.

Bench Strength **2**. Coram: **H.L. Gokhale** and *Kurian Joseph*, JJ. [Date of decision: 5-3-2014]

Ram Pyari v. Jagdish Lal, (1992) 1 SCC 157; Santanu Chaudhuri v. Subir Ghosh, (2007) 10 SCC 253, impliedly relied on

Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685; Banatwala and Co. v. LIC, (2011) 13 SCC 446: (2012) 3 SCC (Civ) 587, explained

(b) Public Premises (Eviction of Unauthorised Occupants) Act, 1971

See 'Public premises' — Eviction, (2014) 13 SCC 291: (2014) 5 SCC (Civ) 712

25. RENT

[901] — Enhancement of — Railways granted lease of land whereupon respondent built superstructure and started commercial activity — Revision of rent challenged — Sustainability —

High Court held that since only vacant plot of land was leased out, licence fee would be payable under Cl. 3.1(b) of Guidelines for Commercial Licensing of Railway Lands — Considering report of mediator, rent of premises fixed at Rs 8000 p.m. as a special case — However, held, instant case not to be treated as a precedent — Guidelines for Commercial Licensing of Railway Lands, Cl. 3.1(b) (Paras 2 to 6). *Southern Railway, Chennai* v. *Delight Mfg. Co.*, (2012) 13 SCC 696: (2014) 5 SCC (Civ) 412: (2012) 114 Cut LT 783.

Bench Strength **2**. Coram: *Dr Dalveer Bhandari* and *Dipak Misra*, JJ. [Date of decision: 28-2-2012]

[902] — Payment of rent at old rate despite renewal of tenancy at enhanced rate of rent — Recovery of arrears of rent calculated at enhanced rate — Claim as to, made by landlord, along with interest — Grant of said arrears, but without interest, by trial court — Reversal of decree of trial court by High Court — Direction to landlord to approach Rent Controller for determination of fair rent — Propriety — *Landlord claimed enhanced rent on basis of rent prevailing in locality where tenanted premises located — Documents on record showing that demand raised by landlord for enhancement of rent was accepted by tenant Bank — There was clear understanding between parties concerned that tenancy agreement would continue at an enhanced rent — On such facts, held, trial court rightly decreed the suit — High Court erred in reversing said decree and requiring landlord to move Rent Controller for fixation of fair rent of the premises — Exercise directed by High Court being wholly unnecessary besides being inequitable and litigious, held, should have been avoided — Thus, in view of the above, judgment and decree of High Court set aside and that of trial court restored — Considering that tenant did not require the second floor of tenanted premises any further and was ready and willing to surrender that floor to landlord, direction made to tenant to act accordingly — Transfer of Property Act, 1882, S. 108(l) — Contract Act, 1872, S. 62. Gulab Chand Bhora* v. *Punjab National Bank*, (2013) 15 SCC 610: (2014) 5 SCC (Civ) 383: (2014) 103 ALR 229: (2014) 135 AIC 147.

Bench Strength **2**. Coram: *H.L. Gokhale* and **Ranjan Gogoi**, JJ. [Date of decision: 11-11-2013]

Punjab National Bank v. Gulab Chand Bhora, (2008) 3 CHN 654: (2008) 64 AIC 533; Gulab Chand Bhora v. Punjab National Bank, Cross Objection Appeal (COT) No. 1480 of 2007, order dated 28-1-2008 (Cal), reversed

26. REVISION

[903] — Interference with findings of fact of first appellate court/authority — Revisional powers of High Court under various State Rent Acts — Scope of — *Held, none of the Rent Acts of Haryana, T.N. or Kerala confer on revisional authority the power as wide as that of the appellate court despite such statutory revisional power being wider than that provided in S. 115 of CPC — Provisions under consideration do not permit High Court to invoke its revisional jurisdiction under the cloak of an appeal in disguise — Revisional Court is not entitled to reappreciate the evidence and substitute its own conclusion in place of conclusion of appellate authority — View in* Rukmini Amma, *(1993) 1 SCC 499, affirmed —* Ram Dass, *(1988) 3 SCC 131 does not lay down any different principle: it only emphasises that in dealing with findings of fact, the examination of findings of fact by High Court is limited to satisfy itself that the decision is "according to law" — Whether or not a finding of fact recorded by the subordinate court/tribunal is according to law, is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice — Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965), Ss. 18 and 20 — T.N. Buildings (Lease and Rent Control) Act, 1960 (18 of 1960), Ss. 23 and 25 — Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973), Ss. 15 and 15(6) — CPC, 1908, S. 115 — Constitution of India, Art. 141*

Answering the reference in the terms below,

Held :

A careful reading of the text of three provisions viz. Section 15(6) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 and Section 25 of the Tamil Nadu Rent Control Act will show that under Section 15(6) of the Haryana Rent Control Act, the High Court as a revisional authority, may suo motu or on the application of an aggrieved party, call for and examine the record relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality or propriety of such order or proceedings and may pass such order as it may deem fit. The Tamil Nadu Rent Control Act provides that the High Court on the application of an aggrieved person may call for and examine

the record of the appellate authority to satisfy itself as to the regularity of such proceedings or the correctness, legality or propriety of any decision or order passed therein. The High Court in exercise of its revisional power may modify, annul or reverse the order or decision impugned before it or remit the matter for reconsideration. In the Tamil Nadu Rent Control Act, the High Court has no power to act suo motu. The Kerala Rent Control Act provides that the High Court on the application of an aggrieved party may call for and examine the record relating to any order passed or proceedings taken under the Act for the purpose of satisfying itself as to the legality, regularity or propriety of such order or proceedings and pass any order that it deems fit. Like the Tamil Nadu Rent Control Act, the Kerala Rent Control Act also does not empower the High Court to act suo motu. Though, there is some difference in the language of the revisional provision in the above three statutes but, the revisional power of the High Court under the above Rent Control Acts is substantially similar and not significantly different. (Para 9)

In this reference, what has to be determined is the extent, scope, ambit and meaning of the terms "legality or propriety", "regularity, correctness, legality or propriety" and "legality, regularity or propriety". Obviously, this will determine the extent of the revisional jurisdiction of the High Court under the respective rent control statutes and will also include the consideration of the question whether the High Court in exercise of its revisional jurisdiction can reappreciate the evidence in order to find out the correctness, legality or propriety of the impugned order or decision. (Paras 10 and 11)

Conceptually, revisional jurisdiction is a part of appellate jurisdiction but it is not vice versa. Both, appellate jurisdiction and revisional jurisdiction are creatures of statutes. No party to the proceeding has an inherent right of appeal or revision. An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction. On the other hand, revisional jurisdiction, though, is a part of appellate jurisdiction but ordinarily it cannot be equated with that of a full-fledged appeal. In other words, revision is not continuation of suit or of original proceeding. When the aid of Revisional Court is invoked on the revisional side, it can interfere within the permissible parameters provided in the statute. It goes without saying that if a revision is provided against an order passed by the Tribunal/appellate authority, the decision of the Revisional Court is the operative decision in law. As regards the extent of appellate or revisional jurisdiction, much would, however, depend on the language employed by the statute conferring appellate jurisdiction and revisional jurisdiction. (Para 28)

The extent, scope, ambit and meaning of the terms "legality or propriety"; "regularity, correctness, legality or propriety"; and "legality, regularity or propriety" which are used in the three Rent Control Acts under consideration need determination. The ordinary meaning of the word "legality" is lawfulness. It refers to strict adherence to law, prescription, or doctrine; the quality of being legal. The term "propriety" means fitness; appropriateness, aptitude; suitability; appropriateness to the circumstances or condition conformity with requirement; rules or principle, rightness, correctness, justness, accuracy. The terms "correctness" and "propriety" ordinarily convey the same meaning, that is, something which is legal and proper. In its ordinary meaning and substance, "correctness" is compounded of "legality" and "propriety" and that which is legal and proper is "correct". The expression "regularity" with reference to an order ordinarily relates to the procedure being followed in accord with the principles of natural justice and fair play. (Para 29)

Although there is some difference in the language employed by the three Rent Control Acts under consideration which provide for revisional jurisdiction but, the revisional power of the High Court under these Acts is substantially similar and broadly such power has the same scope save and except the power to invoke revisional jurisdiction suo motu unless so provided expressly. None of these statutes confer on revisional authority the power as wide as that of the appellate court or appellate authority despite such power being wider than that provided in Section 115 CPC. The provision under consideration does not permit the High Court to invoke the revisional jurisdiction as the cloak of an appeal in disguise. Revision does not lie under these provisions to bring the orders of the trial court/Rent Controller and the appellate court/appellate authority for rehearing of the issues raised in the original proceedings. (Para 30)

Where both expressions "appeal" and "revision" are employed in a statute, obviously, the expression "revision" is meant to convey the idea of a much narrower jurisdiction than that conveyed by the expression "appeal". The use of two expressions "appeal" and "revision" when used in one statute conferring appellate power and revisional

power, is not without purpose and significance. Ordinarily, appellate jurisdiction involves a rehearing while it is not so in the case of revisional jurisdiction when the same statute provides the remedy by way of an "appeal" and so also of a "revision". If that were so, the revisional power would become coextensive with that of the trial court or the subordinate tribunal which is never the case. In the garb of revisional jurisdiction under the above three rent control statutes, the High Court is not conferred a status of second court of first appeal and the High Court should not enlarge the scope of revisional jurisdiction to that extent. (Para 31)

None of the above Rent Control Acts entitles the High Court to interfere with the findings of fact recorded by the first appellate court/first appellate authority because on reappreciation of the evidence, its view is different from the court/authority below. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out that finding of facts recorded by the court/authority below is according to law and does not suffer from any error of law. A finding of fact recorded by court/authority below, if perverse or has been arrived at without consideration of the material evidence or such finding is based on no evidence or misreading of the evidence or is grossly erroneous that, if allowed to stand, it would result in gross miscarriage of justice, is open to correction because it is not treated as a finding according to law. In that event, the High Court in exercise of its revisional jurisdiction under the above Rent Control Acts shall be entitled to set aside the impugned order as being not legal or proper. The High Court is entitled to satisfy itself as to the correctness or legality or propriety of any decision or order impugned before it as indicated above. However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to reappreciate or reassess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the order impugned before it suffers from procedural illegality or irregularity. (Para 43)

Rukmini Amma, (1993) 1 SCC 499 correctly holds that even the wider language of Section 20 of the Kerala Rent Control Act does not enable the High Court to act as a first or a second court of appeal. In *Rukmini case* it is correctly held that the word "propriety" does not confer power upon the High Court to reappreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it. (Paras 38 to 44)

The three-Judge Bench of the Supreme Court in *Ram Dass*, (1988) 3 SCC 131, rightly observes that revisional power is subject to well-known limitations inherent in all the revisional jurisdictions and the matter essentially turns on the language of the statute investing the jurisdiction. The controversy centres round the following observation in *Ram Dass case*, "*.. that jurisdiction enables the court of revision, in appropriate cases, to examine the correctness of the findings of facts also....*" It is suggested that by observing so, the three-Judge Bench in *Ram Dass case* has enabled the High Court to interfere with the findings of fact by reappreciating the evidence. The three-Judge Bench has not gone to that extent in *Ram Dass case*. The observation in *Ram Dass case* that as the expression used conferring revisional jurisdiction is "legality and propriety", the High Court has wider jurisdiction obviously means that the power of revision vested in the High Court in the statute is wider than the power conferred on it under Section 115 CPC; it is not confined to the jurisdictional error alone. However, in dealing with findings of fact, the examination of findings of fact by the High Court is limited to satisfy itself that the decision is "according to law". This is expressly stated in *Ram Dass case*. (Para 32)

Whether or not a finding of fact recorded by the subordinate court/tribunal is "according to law", is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice. *Ram Dass case* does not lay down as a proposition of law that the revisional power of the High Court under the Rent Control Act is as wide as that of the appellate court or the appellate authority or such power is coextensive with that of the appellate authority or that the concluded finding of fact recorded by the original authority or the appellate authority can be interfered with by the High Court by reappreciating evidence because Revisional Court/authority is not in agreement with the finding of fact recorded by the court/authority below. *Ram Dass case* does not exposit that the revisional power conferred upon the High Court is as wide as an appellate power to reappraise or reassess the evidence for coming to a

different finding contrary to the finding recorded by the court/authority below. Rather, it emphasises that while examining the correctness of findings of fact, the Revisional Court is not the second court of first appeal. (Paras 32, 33 and 44). *Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh*, (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723: AIR 2014 SC 3708: (2014) 144 AIC 209: (2014) 5 CTC 217: (2014) 4 KLT 182: (2014) 4 LW 753: (2014) 107 ALR 697.

Bench Strength **5**. Coram: **R.M. Lodha, C.J.** and *Dipak Misra, Madan B. Lokur, Kurian Joseph* and *S.A. Bobde*, JJ. [Date of decision: 27-8-2014]

Dattonpant Gopalvarao Devakate v. Vithalrao Maruthirao Janagaval, (1975) 2 SCC 246; Sri Raja Lakshmi Dyeing Works v. Rangaswamy Chettiar, (1980) 4 SCC 259; Rukmini Amma Saradamma v. Kallyani Sulochana, (1993) 1 SCC 499; Ubaiba v. Damodaran, (1999) 5 SCC 645; D. Sankaranarayanan v. Punjab National Bank, 1995 Supp (4) SCC 675; T. Sivasubramaniam v. Kasinath Pujari, (1999) 7 SCC 275; P.R. Krishnamachari v. Lalitha Ammal, 1987 Supp SCC 250; M.S. Zahed v. K. Raghavan, (1999) 1 SCC 439; Olympic Industries v. Mulla Hussainy Bhai Mulla Akberally, (2009) 15 SCC 528: (2009) 5 SCC (Civ) 689, affirmed

Ramdoss v. K. Thangavelu, (2000) 2 SCC 135; V.M. Mohan v. Prabha Rajan Dwarka, (2006) 9 SCC 606; Ram Narain Arora v. Asha Rani, (1999) 1 SCC 141; M.S. Zahed v. K. Raghavan, (1999) 1 SCC 439; Shaw Wallace & Co. Ltd. v. Govindas Purushothamdas, (2001) 3 SCC 445, explained and affirmed

Ram Dass v. Ishwar Chander, (1988) 3 SCC 131; Rai Chand Jain v. Chandra Kanta Khosla, (1991) 1 SCC 422; Shiv Sarup Gupta v. Mahesh Chand Gupta, (1999) 6 SCC 222; Ram Narain Arora v. Asha Rani, (1999) 1 SCC 141, clarified and affirmed

[904] — Powers of Revisional Court — Conferment of power on High Court under provisions of Rent Acts to satisfy itself as to "legality", "regularity" or "propriety" of decision of appellate authorities or that it is "according to law" — Meaning and Scope — *Held, consideration or examination of the evidence by the High Court in revisional jurisdiction is confined to find out that finding of facts recorded by the court/authority below are according to law and do not suffer from any error of law — Whether or not a finding of fact recorded by the subordinate court/tribunal is "according to law", is required to be seen on the touchstone whether such finding of fact is based on some legal evidence or it suffers from any illegality like misreading of the evidence or overlooking and ignoring the material evidence altogether or suffers from perversity or any such illegality or such finding has resulted in gross miscarriage of justice — Revisional Court may further examine whether the order impugned before it suffers from procedural illegality or irregularity — View taken in* Rukmini Amma, *(1993) 1 SCC 499, that word "propriety" does not confer power upon High Court to reappreciate evidence to come to a different conclusion but its consideration of evidence is confined to find out legality, regularity and propriety of the order impugned before it, affirmed — Words and Phrases — "Legality", "regularity" and "propriety" — Meaning of. Hindustan Petroleum Corpn. Ltd.* v. *Dilbahar Singh*, (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723: AIR 2014 SC 3708: (2014) 144 AIC 209: (2014) 5 CTC 217: (2014) 4 KLT 182: (2014) 4 LW 753: (2014) 107 ALR 697.

Bench Strength **5**. Coram: **R.M. Lodha, C.J.** and *Dipak Misra, Madan B. Lokur, Kurian Joseph* and *S.A. Bobde*, JJ. [Date of decision: 27-8-2014]

27. SUB-LETTING/SUB-TENANT/SUB-TENANCY

See also CIVIL PROCEDURE CODE, 1908, S. 115, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662

— Concurrent findings of fact — Eviction restored *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745

[905] — Ingredients — Parting with legal possession of premises by tenant in favour of another person without landlord's consent by availing monetary consideration in lieu thereof — Sub-tenancy often created in clandestine manner — Burden on landlord seeking eviction of tenant to prove illegal sub-letting — Sub-letting can be proved on basis of legitimate inferences — *Premises let out by appellant-plaintiff landlord to respondent-D-1 Company for residence of Company's executive D-2 — D-1 inducted D-2 in premises accordingly and thus entry of D-2 was legal — But D-2 continued to occupy premises even after his resignation from D-1 Company's service — No evidence showing any clandestine arrangement between Defendants 1 and 2 and surrender of legal possession by D-1 in favour of D-2 in lieu of any monetary consideration — Held on facts, landlord failed to prove sub-letting — Mere inaction of D-1 to institute suit for eviction of D-2 would not establish parting of legal possession — Mere withholding of provident fund dues of D-2 would not establish receiving monetary consideration by D-1 — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 13(1)(e) — Transfer of Property Act, 1882, S. 108(j). S.F. Engineer* v. *Metal Box India Ltd.*, (2014) 6 SCC 780: (2014) 3 SCC (Civ) 662: AIR 2014 SC 2189: (2014) 6 Mah LJ 478: (2014) 104 ALR 473: (2014) 137 AIC 21.

Bench Strength **2**. Coram: *A.R. Dave* and **Dipak Misra**, JJ. [Date of decision: 28-3-2014]

Shama Prashant Raje v. Ganpatrao, (2000) 7 SCC 522; Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217: (2010) 1 SCC (Civ) 69; Vinaykishore

Punamchand Mundhada v. Bhumi Kalpataru, (2010) 9 SCC 129: (2010) 3 SCC (Civ) 625; Bharat Sales Ltd. v. LIC, (1998) 3 SCC 1; Joginder Singh Sodhi v. Amar Kaur, (2005) 1 SCC 31, followed

Metal Box India Ltd. v. S.F. Engineer, Civil Revision Application No. 355 of 2010, decided on 12-8-2010 (Bom), affirmed

28. T.N. BUILDINGS (LEASE AND RENT CONTROL) ACT, 1960 (18 OF 1960)

— **Ss. 23 and 25** *See* 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', S. 15(6), (2014) 9 SCC 102: (2014) 4 SCC (Civ) 747

See also 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

29. TENANCY/TENANT

— **Relinquishment/Surrender** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

— **Succession** *See* TENANCY AND LAND LAWS — 'Occupancy Rights/Tenant/Tenancy', (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318

30. TENANT ACQUIRING ALTERNATIVE PREMISES

See 'Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965)', Ss. 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii), (2011) 15 SCC 534: (2014) 2 SCC (Civ) 635

31. TIME FOR VACATING PREMISES

[906] — Undertaking before court — Tenant's failure to give undertaking within period stipulated by court — *To avoid recurrence of such a situation, High Courts should first require tenant to file undertaking and after placing same on record, it should grant time for vacating premises by passing interim order of stay of operation of eviction decree passed by trial court — Transfer of Property Act, 1882, Ss. 108(q) and 111. Sheela Jawarlal Nagori* v. *Kantilal Nathmal Baldota*, (2014) 11 SCC 376: (2014) 4 SCC (Civ) 122: (2014) 117 Cut LT 1005: (2014) 104 ALR 493: (2014) 137 AIC 120: (2014) 4 LW 782.

Bench Strength **2**. Coram: *Ranjana P. Desai* and **Madan B. Lokur**, JJ. [Date of decision: 25-3-2014]

Dhanraj Nihalchand Oswal v. Kantilal Nathmal Baldota, WP (C) No. 2089 of 2012, order dated 24-10-2013 (Bom), affirmed

32. U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972 (13 OF 1972)

— **S. 21(1)(a)** *See also* 'Bona Fide Requirement of Landlord', (2014) 9 SCC 309: (2014) 5 SCC (Civ) 36

[907] — S. 21(1)(a) — Litigation pending for 22 years for no fault of petitioner landlord — Relief — *Release petition on ground of personal requirement dismissed by impugned order only on ground that matter had been pending litigation for 22 years — Held, petitioner cannot be faulted for pendency of writ petition from 1984 — Matter remitted to High Court for de novo consideration — Doctrines and Maxims — Actus Curiae Neminem Gravabit — Constitution of India, Art. 226* (Paras 3 and 4). *Udai Pratap Singh* v. *Gulab Das*, (2011) 15 SCC 794: (2014) 2 SCC (Civ) 762.

Bench Strength **2**. Coram: *S.H. Kapadia* and *Aftab Alam*, JJ. [Date of decision: 6-4-2009]

33. U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) RULES, 1972

— **R. 16(2)** *See* 'Bona Fide Requirement of Landlord', (2014) 9 SCC 309: (2014) 5 SCC (Civ) 36

34. W.B. PREMISES TENANCY ACT, 1997 (37 OF 1997)

— **S. 6** *See also* 'Eviction suit/Trial', (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135

[908] — S. 6 — Civil Judge having jurisdiction to grant relief as to eviction thereunder — *Powers of — Scope of — Power to grant other reliefs pertaining to decree for arrears of rent, arrears of proportionate and enhanced municipal taxes, mesne profits and permanent injunction claimed in the suit* (Para 20). *Ranjit Kumar Bose* v. *Anannya Chowdhury*, (2014) 11 SCC 446: (2014) 4 SCC (Civ) 135: AIR 2014 SC 1534: (2014) 103 ALR 669: (2014) 136 AIC 258: (2014) 2 Cal LJ 141.

Bench Strength **2**. Coram: **A.K. Patnaik** and *V. Gopala Gowda*, JJ. [Date of decision: 7-3-2014]

35. WRIT JURISDICTION

— **Scope** *See* CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Civil/Private disputes, Arts. 226 and 227, (2014) 6 SCC 508: (2014) 3 SCC (Civ) 601

36. WRIT REMEDY

— **Interference by High Court — When not warranted** *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2011) 15 SCC 666: (2014) 2 SCC (Civ) 745

37. WRONGFUL USER

— **Change of user** *See* 'Haryana Urban (Control of Rent and Eviction) Act, 1973 (11 of 1973)', Ss. 15(6) and 13, (2013) 11 SCC 464: (2014) 1 SCC (Civ) 585

— **Specific purpose of lease — Proof of** *See* TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

REPEAL/AMENDATORY/SUSPENSION OR CLARIFICATORY PROVISION

See STATUTE LAW

REPEAL/SUPERSESSION

See ADMINISTRATIVE LAW — 'Subordinate/Delegated Legislation'

REPUDIATION FOR BREACH OF CONTRACT/TERMINATION

See CONTRACT AND SPECIFIC RELIEF — 'Termination/Discharge of Contract'

REPUDIATION/TERMINATION/DISCHARGE/CANCELLATION OF CONTRACT

See GOVERNMENT CONTRACTS/TENDERS

RES JUDICATA

See CONSTITUTION OF INDIA — 'Article 32' — Maintainability

— 'Article 226' — Maintainability of writ petition

See also PRACTICE AND PROCEDURE

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RESTITUTION

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1. CONCURRENT OBLIGATIONS

— Contractual and Restitutionary claims — Principle of subsidiarity — Applicability of, in claiming restitutionary relief *See* CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Restitutionary remedies — Recompense for benefit conferred — Quantum Meruit ("as much as is deserved"), (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252

2. CONTRACT ACT, 1872

— Ss. 69 and 70 *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 149, 147, 166, 168 and 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

— S. 70 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Refundable amount/refund/refund of deposit/court deposit or order, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

See also LOCAL GOVERNMENT — 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49

— S. 70 — Applicability — Principle of subsidiarity — Applicability of, in claiming restitutionary relief *See* CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Restitutionary remedies — Recompense for benefit conferred — Quantum Meruit ("as much as is deserved"), (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252

— S. 72 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Interest' — Interest Act, 1978, S. 4, (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

— S. 4(1), (2014) 6 SCC 335

— Refundable amount/refund/refund of deposit/court deposit or order, (2014) 5 SCC 660

See also (2014) 6 SCC 335: (2014) 3 SCC (Civ) 553

See also (2014) 13 SCC 598: (2014) 5 SCC (Civ) 731

— S. 72 — Interest on refund of illegally detained sum *See* (2011) 15 SCC 640: (2014) 2 SCC (Civ) 740

[909] — S. 72 — Restitution — Defence of change of position — When available — Negligent conduct on part of claimant — Banker and customer relationship — Liability of banker for mistake committed by it causing irreparable loss to customer — Responsibility of banker to inform erroneous crediting of amount immediately to customer — Delayed information as to mistaken crediting of amount — Effect — Amount mistakenly credited to customer, when not recoverable — *Appellant exporter utilising services of respondent Bank for receiving payment from importer and to report transaction to Reserve Bank of India to claim export benefits — In process of one such transaction, respondent Bank credited an amount of US $199,959.74 towards invoice raised against goods shipped to importer by appellant, but on confirmation from the foreign bank (Bank of America) that said amount was to be credited in Bank of India but not with respondent, remitted same to Bank of America — Having come to know of said mistaken crediting of amount to appellant after two-and-half years, respondent invoking its lien over accounts of appellant to recover said amount — Permissibility — Held, respondent Bank had committed mistake of crediting said amount, thereby making appellant believe that amounts against invoices raised by it had been paid to it — Had Bank not given credit of said amount, appellant would have proceeded against importer at the earliest opportunity — Delay of two and half years in informing appellant as to its mistake by Bank rendered recovery of said amount from importer impossible — Thus, held, appellant need not suffer for mistake of Bank — Bank directed to remit amounts recovered from appellant, with liberty to approach Bank of America or any other entity to recover said amount. Metro Exporters (P) Ltd.* v. *SBI*, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1: AIR 2014 SC 3206.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 23-4-2014]

United Overseas Bank v. Jiwani, (1976) 1 WLR 964: (1977) 1 All ER 733; Kelly v. Solari, (1841) 9 M&W 54: 152 ER 24, approved

Metro Exporters (P) Ltd. v. SBI, WP No. 2202 of 2009, decided on 16-7-2010 (Bom), reversed

[910] — S. 72 — Restitution — Recovery of amount paid in excess without fault of recipient party — Affirming law laid down in *Chandi Prasad Uniyal*, (2012) 8 SCC 417, held, the same is permissible — Any amount paid/received without authority of law can always be recovered — *Matters sent back to regular Benches of Supreme Court, to be disposed of in accordance with law*

These batch of matters were placed before the present three-Judge Bench for authoritative pronouncement on the apparent difference of opinion expressed on the one hand in *Shyam Babu Verma*, (1994) 2 SCC 521 and *Sahib Ram*, 1995 Supp (1) SCC 18 and on the other hand, in *Chandi Prasad Uniyal*, (2012) 8 SCC 417.

Returning the reference as there was no question of law to be decided,

Held :

In *Shyam Babu Verma case*, the Supreme Court while observing that the petitioners therein were not entitled to the higher pay scales, had come to the conclusion that since the amount has already been paid to the petitioners, for no fault of theirs, the said amount shall not be recovered by the respondent Union of India. In *Sahib Ram case*, the Supreme Court once again held that although the appellant therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale. The Supreme Court further observed that this was not on account of misrepresentation made by the appellant but by a mistake committed by the Principal. In a fact situation of that nature, the Supreme Court was pleased to observe that the amount already paid to the appellant need not be recovered. The observations made by the Court not to recover the excess amount paid to the appellant therein were, thus, in exercise of its extraordinary powers under Article 142 of the Constitution of India which vest the power in the Supreme Court to pass equitable orders in the ends of justice. (Paras 4 to 6)

However, in *Chandi Prasad Uniyal case*, the issue was whether the appellant therein can retain the amount received on the basis of irregular/wrong pay fixation in the absence of any misrepresentation or fraud on his part. The Supreme Court after taking into consideration the various decisions of the Supreme Court held that even if by mistake of the employer the amount is paid to the employee and on a later date if the employer after proper determination of the same discovers that the excess payment is made by mistake or negligence, the excess payment so made could be recovered. Therefore, the law laid down in *Chandi Prasad Uniyal case*, in no way conflicts with the observations made by the Supreme Court in the other two cases. In those decisions, directions were issued in exercise of the powers of the Supreme Court under Article 142 of the Constitution, but in the subsequent decision the Supreme Court under Article 136 of the Constitution, in laying down the law had dismissed the petition of the employee. (Paras 7 and 8)

Thus, this reference was unnecessary. Therefore, without answering the reference, the matters are sent back to Regular Benches for their appropriate disposal. (Para 14). *State of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883: (2014) 3 SCC (L&S) 134: (2014) 6 SCC (Cri) 154: (2014) 4 SCC (Civ) 657.

Bench Strength **3**. Coram: *H.L. Dattu*, *R.K. Agrawal* and *Arun Mishra*, JJ. [Date of decision: 8-7-2014]

Shyam Babu Verma v. Union of India, (1994) 2 SCC 521: 1994 SCC (L&S) 683: (1994) 27 ATC 121; Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18: 1995 SCC (L&S) 248; Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450, clarified and harmonised

Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417: (2012) 4 SCC (Cri) 450, affirmed

3. DISGORGEMENT OF GAINS OF WRONGDOER

See 'Unjust enrichment', (2014) 13 SCC 383: (2014) 5 SCC (Civ) 805

4. SUBSIDIARITY PRINCIPLE

— Applicability of, in claiming restitutionary relief *See* CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief' — Restitutionary remedies — Recompense for benefit conferred — Quantum Meruit ("as much as is deserved"), (2011) 15 SCC 101: (2014) 2 SCC (Civ) 252

5. UNJUST ENRICHMENT

[911] — Deposit of tax collected without authority of law — *It was contended before High Court that appellant wine manufacturers collecting excise duty from retailers despite having been exempted from payment on wine production — High Court issued direction to appellant wine manufacturers to deposit such collected excise duty with State as retaining it without any authority would amount to unjust enrichment — Appellant wine manufacturers filed review peti-*

tions and they were also rejected — Sustainability of — Held, as no error was committed by High Court hence no interference is required — However, clarified that whenever demand notice is issued to wine manufacturers for deposit of collected excise duty, they have to establish that they had not collected any excise duty and such collection was not reflected in their books of account — Once such reply was filed, authorities needed to consider such reply and pass appropriate orders — If appellant wine manufacturers are aggrieved then they can approach appropriate forum of law (Paras 8 and 9). *Jaina Wines (P) Ltd.* v. *State of Maharashtra*, (2014) 13 SCC 383: (2014) 5 SCC (Civ) 805.

Bench Strength 2. Coram: *H.L. Dattu* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 11-9-2013]

Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, impliedly relied on

Vilas v. State of Maharashtra, WP No. 7033 of 2007, decided on 19-9-2008 (Bom); Mercury Winery (P) Ltd. v. Vilas, Civil Application No. 10160 of 2009 in WP No. 7033 of 2007, decided on 25-3-2010 (Bom), affirmed

RESTITUTION OF CONJUGAL RIGHTS

See FAMILY AND PERSONAL LAWS

RESTITUTIONARY INTEREST

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

RESTITUTIONARY REMEDIES

See CONTRACT AND SPECIFIC RELIEF — 'Remedies/Relief'

RESTRAINT CLAUSES/AGREEMENTS

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights'

RESTRAINT OF LEGAL PROCEEDINGS

See CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Restraint Clauses/Agreements

RETROACTIVE OPERATION/RETROSPECTIVITY/RETROSPECTIVE

See STATUTE LAW

REVENUE RECORDS

See TENANCY AND LAND LAWS

REVIEW

See CIVIL SUIT

See also CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition

See also PRACTICE AND PROCEDURE

REVIEW OF ORDERS PASSED UNDER ART. 226/APPEAL AGAINST/WRIT APPEALS/LPAs

See CONSTITUTION OF INDIA — 'Article 226'

REVIEW/RECALL

See CONSTITUTION OF INDIA — 'Article 32' — Maintainability

See also PRACTICE AND PROCEDURE

REVIEW/REVISION/RECALL

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

REVISION

See also PRACTICE AND PROCEDURE

See also RENT CONTROL AND EVICTION

See also TENANCY AND LAND LAWS

REVISIONAL MATTERS

See CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226

RIGHT TO ADOPT

See HUMAN AND CIVIL RIGHTS

RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

See LAND ACQUISITION AND REQUISITION

RIGHT TO FREEDOM OF SEXUAL ORIENTATION

See HUMAN AND CIVIL RIGHTS

RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

See HUMAN AND CIVIL RIGHTS

RIGHT TO INFORMATION ACT, 2005

See HUMAN AND CIVIL RIGHTS

RIGHT TO INFORMATION/EXAMINATION PROCESS/BODIES/EXAMINEE

See EDUCATION AND UNIVERSITIES — 'Examination'

RIGHT TO MARRY, RELATIONSHIPS AND SEXUAL FREEDOM

See HUMAN AND CIVIL RIGHTS

RIGHT TO PRIVACY

See HUMAN AND CIVIL RIGHTS

RIGHT TO PROPERTY

See HUMAN AND CIVIL RIGHTS

RIGHT TO RUN CLINIC/HOSPITAL/NURSING HOME/LAND USE

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH — 'Eligibility and Right to Practise Medicine Operate/Run Clinics/Nursing Homes/Hospitals, etc.'

RIGHTS OF MAN/HUMAN RIGHTS

See HUMAN AND CIVIL RIGHTS

ROLE OF THE BAR, ADMINISTRATION AND PUBLIC INSTITUTIONS/OFFICERS

See COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process'

RULE OF CONTRA PROFERENTEM

See DEEDS AND DOCUMENTS — 'Construction/Interpretation of Deeds and Documents' — Subsidiary rules

RULE OF LAW

See CIVIL PROCEDURE CODE, 1908, S. 51, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also CONSTITUTION OF INDIA, Arts. 13, 32, 129, 136, 226, 144, 245 and 246, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— Arts. 32, 226, 136, 129, 144 and Arts. 73, 74, 162 and 163, (2014) 8 SCC 470

— Arts. 129, 142 and 144, (2014) 8 SCC 470

— Arts. 131 and 144, (2014) 8 SCC 470

See also CONSTITUTIONAL LAW

See also COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— 'Judiciary' — Generally, (2014) 8 SCC 470

— Judicial independence and courage, (2014) 8 SCC 470

See also EVIDENCE ACT, 1872

See also PRACTICE AND PROCEDURE — 'Enforcement/Execution of court orders', (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

See also STAMP ACT, 1899

— Bench-hunting or bench-hopping or bench-avoiding — Attempts at — Need to be strongly repulsed *See* COURTS, TRIBUNALS AND JUDICIARY — 'Judicial Process' — Recusal by Judge, (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

[912] — Conduct of litigant not amenable to rule of law — Defiant demeanour and rebellious behaviour of litigant to defeat the cause of justice — Instead of complying, petitioner only engaging Senior Counsel to avoid or defer compliance — Patently false defences, non-cooperative attitude, withholding of relevant materials/information, not honouring assurances/commitments given to court, continuing defiance of court's orders, etc. — Such conduct of Sahara Companies, their promoter (petitioner) and Directors, strongly deprecated — *Fictitious deposit schemes (OFCDs) involving thousands of crores of rupees floated by two Sahara Companies — Order of refund of money to investors passed by SEBI, as confirmed by SAT, further confirmed by Supreme Court via order dt. 31-8-2012 passed in* Sahara India Real Estate Corpn. Ltd., *(2013) 1 SCC 1, and order dt. 5-12-2012,* Sahara India Real Estate Corpn. Ltd., *(2013) 2 SCC 733, not complied with by said companies — Exercising contempt jurisdiction, Supreme Court ordering detention of petitioner and other Directors of the two Sahara companies to enforce compliance with refund orders — In writ petition challenging this detention order, Supreme Court dwelled upon some facts reflecting demeanour of two Sahara Companies, petitioner, and other Directors in process of litigation, leading up to passing of order dt. 31-8-2012 — Trenchantly observed, in the process to cajole the contemnors (including the petitioner Subrata Roy Sahara) into compliance with the Supreme Court's orders dt. 31-8-2012 and 5-12-2012, the Court examined each and every defence raised on behalf of the two Companies — The Court also examined alternative avenues by which the compliance with the orders dt. 31-8-2012 and 5-12-2012, could be ensured — However, the petitioner only engaged eminent Senior Counsel to avoid or defer compliance — Constitution of India, Arts. 129 and 142*

Despite affording the contemnors close to 40 hearings, and despite putting them to terms which ought to have shown them that leniency would not be extended forever, the contemnors have remained adamant and steadfast. They made only one deposit of Rs 5120 crores on 5-12-2012. Besides that amount, not a single paisa has been deposited by the contemnors. The thought that repeatedly comes to our mind is, why had the two Companies not been able to pay anything for the last about 1+ years (close to 17 months) from the Supreme Court's order dated 5-12-2012, whereas, in a period of three/four months (before our order dated 31-8-2012) SIRECL claims to have unilaterally refunded Rs 17,443 crores, and SHICL claims to have on its own redeemed Rs 5442 crores to their investors. If the money could be easily collected and disbursed to the investors then, why not now? Considering the attitude of the petitioner before the Supreme Court, one wonders what would happen to the judicial system, if every court order had to be implemented in the manner as the one in hand. (Para 57)

The number of similar litigants, as the parties in this group of cases (Sahara Group related cases), is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled

at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants. (Para 188)

There is no doubt that the two Sahara companies and the present petitioner, Subrata Roy Sahara, are such litigants. They never subjected themselves to the authority and jurisdiction of SEBI. They have continued with the same mannerism at all levels, right up to the Supreme Court. They have always adopted an accusing stance before all the adjudicatory authorities. Even against the present Bench of the Supreme Court. Exhaustive details in this behalf have been expressed in the order dated 31-8-2012, *Sahara India Real Estate Corpn. Ltd.*, (2013) 1 SCC 1. The pleas raised have been found to be patently false on the face of the record. During the course of passing the present judgment, the Registry placed before the present Bench, a compilation of the orders passed on different dates of hearing ever since the filing of the appeals which culminated in passing of the order dated 31-8-2012. The Supreme Court was astounded to learn that the controversy arising out of Civil Appeals Nos. 9813 and 9833 of 2011 (disposed of vide order dated 31-8-2012) was listed for hearing on as many as 81 dates. A lot of these hearings consumed the Court's full working day. The hearing of the main case consumed one full part of the entire summer vacation (of the Supreme Court) of the year 2012. For the various orders passed by the Supreme Court, including the order dated 31-8-2012 (running into 269 printed pages) and the present order (running into 205 printed pages), substantial Judge hours were consumed. In this country, judicial orders are prepared, beyond Court hours, or on non-working days. It is apparent that not a hundred, but hundreds of Judge hours, came to be spent in the instant single Sahara Group litigation just at the hands of the Supreme Court. This abuse of the judicial process needs to be remedied. Therefore, the legislature needs to give a thought to a very serious malady which has made strong inroads into the Indian judicial system. (Paras 189, 190, 185.3 and 22 to 42, 46 to 58, 83 to 88, 90, 111 to 116, 129, 130 and 133 to 137)

The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost for no fault? The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues a litigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs". (Para 191)

It is not suggested that the cost of litigation should be enhanced. It is not our suggestion that the court fee or other litigation related costs should be raised. Access to justice and related costs should be as free and as low as possible. What is sought to be redressed is a habituation to press illegitimate claims. This practice and pattern is so rampant that in most cases disputes which ought to have been settled in no time at all before the first court of incidence are prolonged endlessly for years and years and from court to court up to the highest Court. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly up to the highest Court just because of the lack of responsibility to take decisions. So much so that the Courts have started to entertain the impression that all administrative and executive decision-making are being left to courts just for that reason. In private litigation as well, the litigant concerned would continue to approach the higher Court, despite the fact that he had lost in every court hithertobefore. The effort is not to discourage a litigant in whose perception his cause is fair and legitimate. The effort is only to introduce consequences if the litigant's perception was incorrect and if his cause is found to be not fair and legitimate he must pay for the same. In the present setting of the adjudicatory process a litigant no matter how irresponsible he is, suffers no consequences. Every litigant, therefore, likes to

take a chance even when counsel's advice is otherwise. (Paras 192 and 193)

Does the litigant concerned realise that the litigant on the other side has had to defend himself, from court to court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims to somehow or the other defeat the process of law. The present case is a classic illustration of what the Court wishes to express. Herein the regulating authority has had to suffer litigation from court to court incurring public expense in its defence against frivolous litigation. Every order was consistently and systematically disobeyed. Every order passed by SEBI was assailed before the next higher authority, and then before the Supreme Court. Even though High Courts have no jurisdiction in respect of issues regulated by the SEBI Act, some matters were taken to the High Court of Judicature of Allahabad (before its Lucknow Bench). Every such endeavour resulted in failure and was also sometimes accompanied with strictures. Even after the matter had concluded after the controversy had attained finality the judicial process is still being abused for close to two years. A conscious effort on the part of the legislature in this behalf would serve several purposes. It would, besides everything else, reduce frivolous litigation. When the litigating party understands that it would have to compensate the party which succeeds, unnecessary litigation will be substantially reduced. At the end of the day, Court time lost is a direct loss to the nation. It is about time that the legislature should evolve ways and means to curtail this unmindful activity. The Court is sure that an eventual determination one way or the other would be in the best interest of this country, as also, its countrymen. (Para 194). *Subrata Roy Sahara* v. *Union of India*, (2014) 8 SCC 470: (2014) 3 SCC (Cri) 712: (2014) 4 SCC (Civ) 424: AIR 2014 SC 3241: 2014 Cri LJ 3437.

Bench Strength **2**. Coram: *K.S.P. Radhakrishnan* and **J.S. Khehar**, JJ. [Date of decision: 6-5-2014]

Applied in *SEBI v. Sahara India Real Estate Corpn. Ltd., (2014) 8 SCC 751*

— Primacy of Human Rights over any religious doctrine *See* CONSTITUTION OF INDIA, Preamble and Arts. 14, 19, 21, 25 and 26, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— Religious courts — Dar-ul-Qazas/Nizam-e-Qazas — Establishment of such courts to administer justice to members of particular religion — Impermissibility *See* CONSTITUTIONAL LAW — 'Sovereignty/Sovereign functions', (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

[913] — Sovereignty/Sovereign functions — Judicial power of State — Jurisdiction to exercise — Adjudication of disputes — Monopoly of Judicial Wing of State — Power to adjudicate — *Held, must flow from validly made law — Dar-ul-Qazas/Nizam-e-Qazas established for settlement of disputes of Muslims, held, are neither created nor sanctioned by any law made by competent legislature — Hence, they do not have powers to adjudicate upon rights and liabilities of Muslims — Fatwas issued by them are mere opinions which are neither binding on anyone nor enforceable — Clarified however, that existence of Dar-ul-Qazas/Nizam-e-Qazas or practice of issuing fatwas/opinions is not illegal — It is a mere informal justice delivery system with objective of bringing about amicable settlement between Muslims — Constitution of India, Arts. 124, 214, 215, 233 and Art. 245 r/w Sch. VII List II Entry 65 & List III Entry 46 — CPC, 1908, S. 89 — Arbitration and Conciliation Act, 1996, S. 67*

The question that arose in the present writ petition was: whether Dar-ul-Qazas/Nizam-e-Qazas established by the All India Muslim Personal Law Board to amicably settle disputes of Muslims were parallel courts and fatwas issued by them had any legal status.

Answering in the negative,

Held :

It is well settled, that adjudication by a legal authority sanctioned by law is enforceable and binding and meant to be obeyed unless upset by an authority provided by law itself. The power to adjudicate must flow from a validly made law. A person deriving benefit from the adjudication must have the right to enforce it and the person required to make provision in terms of adjudication has to comply that and on its failure consequences as provided in law are to ensue. These are the fundamentals of any legal judicial system. The decisions of Dar-ul-Qaza or the fatwa do not satisfy any of these requirements. Dar-ul-Qaza is neither created nor sanctioned by any law made by the competent legislature. Therefore, the opinion or the fatwa issued by Dar-ul-Qaza or for that matter anybody is not adjudication of dispute by an authority under a judicial system sanctioned by law. A Qazi or Mufti has no authority or powers to impose his opinion and enforce his fatwa on anyone by any coercive method. In fact, whatever may be the status of fatwa during Mughal or British Rule, it has no place in independent India under our constitutional scheme. It has no legal sanction and cannot be enforced by any legal process either by the Dar-ul-Qaza issuing

that or the person concerned or for that matter anybody. The person or the body concerned may ignore it and it will not be necessary for anybody to challenge it before any court of law. It can simply be ignored. In case any person or body tries to impose it, their act would be illegal. Therefore, the grievance of the petitioner that Dar-ul-Qazas and Nizam-e-Qazas are running a parallel judicial system is misconceived. (Para 13)

The object of establishment of a Muslim court may be laudable but there is no doubt that it has no legal status. It is bereft of any legal pedigree and has no sanction in laws of the land. They are not part of the *corpus juris* of the State. A fatwa is an opinion, only an expert is expected to give. It is not a decree, nor binding on the court or the State or the individual. It is not sanctioned under our constitutional scheme. But this does not mean that existence of Dar-ul-Qaza or for that matter practice of issuing fatwas are themselves illegal. It is informal justice delivery system with an objective of bringing about amicable settlement between the parties. It is within the discretion of the persons concerned either to accept, ignore or reject it. However, as the fatwa gets strength from the religion: it causes serious psychological impact on the person intending not to abide by that. As projected by Respondent 10 "Godfearing Muslims obey the fatwas". In the words of Respondent 10 "it is for the persons/parties who obtain fatwa to abide by it or not". He, however, emphasises that "persons who are Godfearing and believe that they are answerable to the Almighty and have to face the consequences of their doings/deeds, such are the persons, who submit to the fatwa". *I*'s case is an eye-opener in this context. Though she became the victim of lust of her father-in-law, her marriage was declared unlawful and the innocent husband was restrained from having a physical relationship with her. In this way a declaratory decree for dissolution of marriage and decree for perpetual injunction were passed. Though neither the wife nor the husband had approached a Dar-ul-Qaza for any opinion, an opinion was sought for and given at the instance of a journalist, a total stranger. In this way, the victim has been punished. A country governed by rule of law cannot fathom it. (Paras 14 and 15)

One may not object to issuance of a fatwa on a religious issue or any other issue so long it does not infringe upon the rights of individuals guaranteed under law. Fatwa may be issued in respect of issues concerning the community at large at the instance of a stranger but if a fatwa is sought by a complete stranger on an issue not concerning the community at large but individual, then the Dar-ul-Qaza or for that matter anybody may consider the desirability of giving any response and while considering it should not be completely unmindful of the motivation behind the fatwa. Having regard to the fact that a fatwa has the potential of causing immense devastation, a word of caution must be added: Dar-ul-Qaza or for that matter anybody, must not give any response or issue a fatwa concerning an individual, unless asked for by the person involved or the person having a direct interest in the matter. However, in a case the person involved or the person directly interested or likely to be affected is incapacitated, then any person having some interest in the matter may also seek a fatwa on their behalf. Issuance of fatwa on rights, status and obligation of individual Muslims, is not permissible, unless asked for by the person concerned or in case of incapacity, by the person interested. Fatwas touching upon the rights of an individual at the instance of rank strangers may cause irreparable damage and therefore, are absolutely uncalled for. It shall be in violation of basic human rights. It cannot be used to punish the innocent. No religion including Islam punishes the innocent. Religion cannot be allowed to be merciless to the victim. Faith cannot be used as the dehumanising force. (Para 16)

Therefore, it is observed that no Dar-ul-Qazas or for that matter, anybody or institution by any name, shall give verdict or issue fatwa touching upon the rights, status and obligation, of an individual unless such an individual has asked for it. In the case of incapacity of such an individual, any person interested in the welfare of such person may be permitted to represent the cause of individual concerned. In any event, the decision or the fatwa issued by whatever body being not emanating from any judicial system recognised by law, it is not binding on anyone including the person, who had asked for it. Further, such an adjudication or fatwa does not have a force of law and, therefore, cannot be enforced by any process using coercive method. Any person trying to enforce that by any method shall be illegal and has to be dealt with in accordance with law. (Paras 17 and 18). *Vishwa Lochan Madan* v. *Union of India*, (2014) 7 SCC 707: (2014) 2 SCC (L&S) 506: (2014) 5 SCC (Cri) 304: (2014) 3 SCC (Civ) 798: AIR 2014 SC 2957: (2014) 4 CTC 779: (2014) 3 KLT 206: (2014) 118 Cut LT 314: (2014) 106 ALR 266: (2014) 3 KCCR 1993: (2014) 141 AIC 244.

Bench Strength 2. Coram: **C.K. Prasad** and *P.C. Ghose*, JJ. [Date of decision: 7-7-2014]

[**Ed.**: Apart from the case of *I*, two other rape cases of Muslim women by their fathers-in-law and fatwas issued in their cases were highlighted before the Supreme

Court by the petitioner. In one such case, a fatwa was issued ruling that no police report could be filed against the father-in-law who could have been blamed only if there had either been a witness or the victim's husband had endorsed her allegation. In the second shocking case of rape of a 19 year old Muslim woman by her father-in-law, a fatwa was issued asking the victim to accept the rapist father-in-law as her real husband and divorce her husband. Such cases depict the further victimisation of rape victims instead of delivering to them any justice which was portrayed as the main objective of functioning of Dar-ul-Qazas and consequent issuance of fatwas by them.]

[914] — Strict Adherence to — Necessity of — Reiterated — *Held, every person is subject to ordinary law irrespective of his rank and condition — Everyone should ensure respect for law — Breach of such respect for such judicial institutions would demolish faith of people in such institutions — As a result individual authority and strength would prevail over wisdom of law* (Para 22). *Priya Gupta* v. *Ministry of Health & Family Welfare*, (2013) 11 SCC 404: (2014) 1 SCC (Civ) 534: 2013 Cri LJ 732: (2013) 116 Cut LT 91.

Bench Strength **2**. Coram: *A.K. Patnaik* and **Swatanter Kumar**, JJ. [Date of decision: 13-12-2012]

RUN CLINICS/ELIGIBILITY AND RIGHT TO PRACTISE MEDICINE OPERATE/NURSING HOMES/HOSPITALS, ETC.

See DRUGS, COSMETICS, MEDICAL PRACTICE & PRACTITIONERS AND PUBLIC HEALTH

SALE

See PROPERTY LAW

SALE/COURT-AUCTION

See CIVIL SUIT

See also PRACTICE AND PROCEDURE

SALE OF DEBTOR'S PROPERTY

See DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief'

SANCTION FOR TRANSFER OF LAND/ CHANGE IN LAND USE

See GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES

SAVING SCHEMES/NON-SCHEDULED BANKS/ NBFCs/CHIT FUNDS/FINANCIAL LEASING/ HIRE- PURCHASE

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SCHEMES FRAMED/DETAILED DIRECTIONS ISSUED BY COURT/DIRECTIONS TO ENSURE COMPLIANCE

See CONSTITUTION OF INDIA — 'Article 136' — Exercise of power under by Supreme Court — Relief

SCOPE OF INTERFERENCE UNDER

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SET-OFF/COUNTER-CLAIMS

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SETTLEMENT/FAMILY ARRANGEMENT

See FAMILY AND PERSONAL LAWS — 'Hindu Law'

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SEXUAL FREEDOM AND EXPRESSION

See CONSTITUTION OF INDIA — 'Article 19' — Articles 19(1)(a) & (2) — Freedom of speech and expression — Article 19(1)(a) — Nature, Scope and Constituents

SEXUAL ORIENTATION FREEDOM/ MARRIAGE, RELATIONSHIPS AND SEXUAL FREEDOM

See CONSTITUTION OF INDIA — 'Article 21' — "Life" — Meaning and Scope: Broadly construed — Rights covered

SHAM TRANSFERS/FRAUDULENT

See PROPERTY LAW

SHOPS BY HOUSING BOARD/ALLOTMENT/ AUCTION OF FLATS/PLOTS/HOUSES/ DEVELOPMENT AUTHORITY

See LOCAL GOVERNMENT — 'Town Planning'

SHOW-CAUSE/NOTICE

See ADMINISTRATIVE LAW — 'Natural Justice' — Audi Alteram Partem — Right to Hearing

See also NATURAL JUSTICE — 'Audi Alteram Partem — Right to Hearing'

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See CONSTITUTIONAL LAW

SOVEREIGNTY/SOVEREIGN FUNCTIONS

See CONSTITUTIONAL LAW

SPEAKING ORDER/DUTY TO GIVE REASONS/RECORDING OF REASONS

See ADMINISTRATIVE LAW — 'Natural Justice'

See also NATURAL JUSTICE

SPECIAL COURT (TRIAL OF OFFENCES RELATING TO TRANSACTIONS IN SECURITIES) ACT, 1992

See SECURITIES, MARKETS AND EXCHANGES

SPECIAL MARRIAGE ACT, 1954

See FAMILY AND PERSONAL LAWS

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SPECIFIC PERFORMANCE OF CONTRACT

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See CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes'

SPECIFIC RELIEF ACT, 1963

See CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes'

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[915] — Distinction between and effect of

A subsequent legislation often makes a reference to earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by later legislation. Such a legislation may either be (*i*) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (*ii*) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. (Para 17)

Therefore, a distinction has to be drawn between a mere reference or citation of one statute into another and incorporation. In the case of mere reference of citation, a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute. (Para 19)

Section 331(4) of the U.P. Zamindari Abolition and Land Reforms Act has used the expression "on any of the grounds" specified in Section 100 CPC. Consequently, the then existing Section 100 (i.e. Section 100, as it existed in the 1908 Code unamended) was incorporated in Section 331(4) and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right of appeal to the Board of Revenue under Section 331(4) clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the legislature and to which the legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the legislature intended to limit the right of appeal. (Para 26)

The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High Court. In such circumstances the orders passed by the High Court as well as the Board of Revenue are set aside and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. (Paras 27 and

28). *State of Uttarakhand* v. *Mohan Singh*, (2012) 13 SCC 281: (2014) 5 SCC (Civ) 633: AIR 2013 SC 38.

Bench Strength 2. Coram: *K.S.P. Radhakrishnan* and *Dipak Misra*, JJ. [Date of decision: 12-9-2012]

[916] — Extent to which the incorporation of another statute extends — Exercise of power of delegated legislation/statutory power under provision of incorporated statute, if amounts to exercise of power under incorporating statute — *1976 Act being a legislation by incorporation and legislation by reference to 1973 Act — Legal effect of an order passed S. 41, 1973 Act — Said order not being addressed to authorities under 1976 Act but there being a provision (i.e. S. 12, 1976 Act) for applicability of S. 41, 1973 Act to authorities under 1976 Act — Effect — Held, said order dt. 22-10-2010 cannot be deemed to be an order under S. 12, 1976 Act — The authorities to which said order was passed are under a different department of Government and not Noida — The decision taken by one administrative department shall not apply to another department unless a conscious decision is taken to apply the same to both the departments or if the rules of executive business of the State so permit — Thus in the absence of express direction to Noida, the order dt. 22-10-2010 addressed to authorities under 1973 Act shall not be deemed to be an order under S. 12, 1976 Act — High Court therefore, erred in giving benefit of doubt to authorities under said ground — U.P. Industrial Area Development Act, 1976 (6 of 1976), Ss. 12 and 2(d) — U.P. Urban Planning and Development Act, 1973 (11 of 1973), S. 41*

Various cooperative housing societies, including the two respondent societies had purchased lands, which were subsequently declared to be industrial area by a declaration under Section 2(*d*) of the U.P. Industrial Area Development Act, 1976 (1976 Act). Disputes arose between the Government and these societies (including the two respondent societies) as residential houses could not be permitted in an industrial area. Noida (New Okhla Industrial Development Authority) constituted a committee (the Committee) to resolve the dispute. The Committee recommended that only one plot should be allotted to each member of 16 specified housing societies. But the recommendation did not include the names of the two respondent societies. The Committee further recommended that said benefit would be given only to members of those housing societies which were cooperative housing societies as on 1-5-1976 (respondent societies having come into existence after the said date). The respondent societies prayed to Noida from time to time for allotment of a suitable alternative developed piece of plot on basis of said recommendations and by relying on Notification dated 22-10-2002 of the Department of Housing and Urban Planning.

The High Court by the impugned order directed the appellant authority Noida to give benefit to the respondent societies under the Notification dated 22-10-2002. The High Court directed said relief to respondent societies by holding that as the respondent societies were cooperative societies, they were entitled to said benefit, denial of which would be arbitrary and discriminatory. The High Court further held that it was immaterial even if the respondent societies had not been registered prior to the 1976 Act.

The contention on behalf of the State Government was that the benefit under the Notification dated 22-10-2002 was under the U.P. Urban Planning and Development Act, 1973 (1973 Act) and could not be extended to the said industrial area, which was governed under 1976 Act. And the authorities under the two statutes function under different departments of the Government. The respondent societies on the other hand contended that both the authorities are same and notification would apply to Noida.

The two main issues in the present case was whether recommendations of the Committee covered the two respondent societies. And whether Noida was bound by the Notification dated 22-10-2002.

Allowing the appeals and answering both the questions in the negative,

Held :

It is evident that the Committee made recommendation for allotment of one plot per member to the members of sixteen specified cooperative housing societies and, while doing so, it further observed that only those members shall be entitled to get plots who were bona fide members as on 1-5-1976. Both the respondent societies do not find place in the said recommendation and further it is not their case that they were even existing on 1-5-1976. The High Court fell into error in observing that the report simply talks about the cooperative housing societies irrespective of the year of registration. Hence, the High Court erred in holding that the denial of benefit of the Committee's report to the two respondent societies is arbitrary and discriminatory. The said reasoning of High Court is therefore, disapproved. (Paras 18 and 19)

The 1973 Act aimed to provide for the planned development of certain areas of the State. Sections 3 and 4 thereof confer power on the State Government to declare an area to be developed as a development area and constitute development authority for that area. Section 41 of the 1973 Act vests power on the State Government to issue direction for "efficient administration of the Act" and casts duty upon the development authority, its Chairman or the Vice-Chairman to carry out such direction. Section 12 of the 1976 Act provides for application of certain provisions of the 1973 Act including Section 41. (Paras 21.3 to 21.5)

Noida is an industrial development authority constituted under Section 3, 1976 Act. The authority under the 1976 Act can be constituted for any industrial development area and such areas would be those which have been declared as such by the State Government by a notification under Section 2(*d*), 1976 Act. The object of the industrial development authority, as is evident from Section 6, 1976 Act is to secure planned development of the industrial development areas. Its functions include providing infrastructure for industrial, commercial or residential purposes as also to allocate and transfer either by way of sale or lease or otherwise, plots of land for the aforesaid purposes. (Paras 21.1 and 21.2)

The 1973 Act is an earlier Act whereas 1976 Act is a later Act. Incorporation of the provisions of the earlier Act into a later Act is a legislative device adopted for the sake of convenience and in order to avoid verbatim reproduction of the provisions of the earlier Act into the later Act. When such a legislation is made by incorporation, the provisions so incorporated become part and parcel of the later Act. Therefore, Section 41 of the 1973 Act shall be deemed to have been incorporated in the 1976 Act with adaptation and the authority constituted under the 1973 Act shall be deemed to be in reference to an authority constituted under the 1976 Act and the Vice-Chairman under the 1973 Act would be the Chief Executive Officer of the 1976 Act. However, the power exercised under Section 41 of the 1973 Act shall not be deemed to result in an order under Section 12 of the 1976 Act merely on the ground that Section 41 has been included in the 1976 Act by incorporation which is a device adopted for the sake of convenience. (Paras 22.1 to 22.3)

The order dated 22-10-2002 has been issued by the Housing Department of the State Government. It has been addressed to various authorities but not addressed to the industrial development authorities. The Vice-Chairman of the development authorities cannot be read to mean the Chief Executive Officer of the Industrial Development Authority constituted under the 1976 Act. Such an order can be passed in respect of the industrial development authority in view of Section 12 by such departments of the State Government which have administrative control over the industrial development authority. However, in case such a power is exercised by such a department of the State Government it shall have no bearing on the development authorities constituted under the 1973 Act. The decision taken by one administrative department concerned with industrial development authority shall not apply to the development authorities within administrative control of another department of the State Government or vice versa unless a conscious decision is taken to apply the same to both the categories of authorities in case the rules of executive business of the State so permits. (Paras 22.4 to 22.5)

Therefore, the order dated 22-10-2002 shall not be applicable to the appellant authority. Both the grounds given by the High Court while issuing the impugned direction, being unsustainable in law, the same cannot be allowed to stand. In the result, these appeals are allowed, the impugned judgments and orders of the High Court are set aside. But there shall be no order as to costs. (Paras 23 and 24). *NOIDA* v. *Sarvpriya Sehkari Avas Samiti Ltd.*, (2013) 11 SCC 284: (2014) 1 SCC (Civ) 156: AIR 2013 SC 3143.

Bench Strength **2**. Coram: **Chandramauli Kr. Prasad** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 11-4-2013]

Sarvpriya Sahakari Avas Samiti Ltd. v. State of U.P., Civil Misc. WP No. 41065 of 2003, order dated 20-6-2008 (All); Shivalik Sahkari Avas Samiti v. State of U.P., (2010) 82 ALR 660; Sarvpriya Sahakari Avas Samiti Ltd. v. Noida Authority, Civil Misc. WP No. 45613 of 2002, order dated 25-10-2002 (All), reversed

6. OVERRIDING EFFECT/NON OBSTANTE CLAUSE

— Strict construction *See* (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

7. PARI MATERIA PROVISIONS

[917] — Andhra Act, held is in pari materia with Tamil Nadu Protection of Interests of Depositors (in Financial Establishments) Act, 1997, Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 and Pondicherry Protection of Interests of Depositors in Financial Establishments Act, 2004 — *Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 (17 of 1999), Ss. 2(c), 3, 5 to 9* (Para 16). *Soma Suresh Kumar* v. *Govt. of A.P.*, (2013) 10 SCC 677: (2014) 1 SCC

(Cri) 378: (2014) 1 SCC (Civ) 90: AIR 2013 SC Supp 816: (2013) 180 Comp Cas 277.
Bench Strength 2. Coram: **K.S.P. Radhakrishnan** and *A.K. Sikri*, JJ. [Date of decision: 12-9-2013]

8. PRESUMPTIONS

See EVIDENCE ACT, 1872, Ss. 4 and 101 to 117, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

9. PROVISO

See DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

10. RETROSPECTIVE/RETROACTIVE OPERATION/RETROSPECTIVITY

[918] — Presumption against retrospectivity when substantial rights affected — Extent of retrospectivity is limited only to that expressly provided for — Public Premises (Eviction of Unauthorised Occupants) Act, 1971 not expressly providing for retrospective effect, held, is prospective in nature and did not have the effect of affecting/overriding vested rights — *Public Premises (Eviction of Unauthorised Occupants) Act, 1971, S. 15 — General Clauses Act, 1897, S. 6. Suhas H. Pophale* v. *Oriental Insurance Co. Ltd.*, (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685: AIR 2014 SC 1509: (2014) 103 ALR 692: (2014) 136 AIC 161.
Bench Strength 2. Coram: **H.L. Gokhale** and *Jasti Chelameswar*, JJ. [Date of decision: 11-2-2014]

M. Mohammed v. Union of India, AIR 1982 Bom 443, distinguished on facts

Suhas H. Pophale v. Oriental Insurance Co. Ltd., (2010) 5 Mah LJ 744: (2010) 4 Bom CR 279, reversed

Chandavarkar Sita Ratna Rao v. Ashalata S. Guram, (1986) 4 SCC 447, distinguished

Halsbury's Laws of England, 4th Edn., Vol. 44, paras 921, 922, 925 and 926; Southerland on Statutory Construction (3rd Edn.) Vol. I, cited

11. STATUTORY BODY/AUTHORITY

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(a) Primacy of parent statute/primary statutes

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(b) Primacy over Administrative orders/Decisions/Executive Instructions/Orders/Circulars

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STRICTURES/ADVERSE/DISPARAGING REMARKS/OBSERVATIONS

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1. ALIENATION

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2. ANDAMAN AND NICOBAR ISLANDS LAND REVENUE AND LAND REFORMS REGULATIONS, 1966

— Regns. 211, 144, 146, 151 and 141 to 143 *See also* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Res judicata, Arts. 226, 32 and 136, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259

[919] — Regns. 211, 144, 146, 151 and 141 to 143 — Grant for 30 yrs under 1926 Regulations renewed for another 30 yrs (that is till 1994) under provisions of 1926 Regulations (said renewal being prior to enactment of 1966 Regulations) — Whether such grant can continue until contingencies under Regn. 151, 1966 Regulations arise or would expire in 1994 — *Authorities not renewing grant under 1926 Regulations beyond 1994 nor making a fresh grant thereafter under 1966 Regulations — But fact was grantees having realised their position (that is that their earlier grant had expired), had made representations dated 8-5-2000 and 15-5-2000 to Lt. Governor for fresh grant under 1966 Regulations, which was rejected — Thereafter, the grantees again approached the superior courts with new plea of Regn. 151, 1966 Regulations — Held, the grantees under 1926 Regulations whose grants had not expired prior to enactment of 1966 Regulations, had the right to continue only till the unexpired period of the grant (in present case till 1994) — This is the extent and limit of right created by Regn. 144(1)(a) or Regn. 146 r/w Regn. 211, 1966 Regulations — Regn. 144(1)(a) of 1966 Regulations only gives a right to grantee under the repealed regulation to continue a valid unexpired grant as if it were a grant under 1966 Regulations but it does not give a right to stay in possession in perpetuity or continue possession of a land when the grant has expired — Regn. 146 of 1966 Regulations also cannot come to the aid of the grantees because they had already enjoyed the grant for 60 yrs, the limit fixed by Regn. 146 of 1966 Regulations — Thus after having exhausted their unexpired period said grantees have a liability under Regn. 211 of 1966 Regulations to surrender the possession of land and cannot claim any further right under Regn. 151 of 1966 Regulations — The saving provision of Regn. 211 of 1966 Regulations provides that the repeal of 1926 Regulations would not affect any liability under the repealed regulations — Liability of grantees under the repealed regulation was to hand over possession of the grant which expired in 1994 — Andaman and Nicobar Islands (Land Tenure) Regulations, 1926, Regn. 4(1)(a) — Statute Law — Amendatory/Repeal/Suspension or Clarificatory provision — Saving of liabilities of earlier enactment under provisions of new enactment — General Clauses Act, 1897, S. 6** (Paras 18 and 26 to 34). *Shiv Chander More* v. *Lt. Governor*, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259: AIR 2014 SC 2669: (2014) 2 Cal LJ 225: (2014) 2 Cal LT 67.

Bench Strength 2. Coram: **T.S. Thakur** and *Chockalingam Nagappan*, JJ. [Date of decision: 7-3-2014]

3. ANDAMAN AND NICOBAR ISLANDS (LAND TENURE) REGULATIONS, 1926

— Regn. 4(1)(a) *See also* 'Andaman and Nicobar Islands Land Revenue and Land Reforms Regulations, 1966', (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259

— Regn. 4(1)(a) — Grant under — Rights under new regulation (1966 Regulations) not pleaded in earlier round of litigation — Plea barred by applicability of constructive res judicata to such pleading in subsequent round of litigation *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Res judicata, Arts. 226, 32 and 136, (2014) 11 SCC 744: (2014) 4 SCC (Civ) 259

4. BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948 (67 OF 1948)

— Ss. 32-G and 43-A *See* 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

[920] — S. 43-A(1)(b) — "Leases of land granted to any bodies or persons" — Use of plural expression "bodies or persons" — Held, would also include singular body or person, in absence

of there being anything repugnant in the subject or context — S. 13 of Bombay General Clauses Act applicable — *Bombay General Clauses Act, 1904 (1 of 1904), S. 13 — Words and Phrases — "Bodies" or "persons" or "leases" includes "body" or "person" or "lease" — General Clauses Act, 1897, S. 13(2). Govinda Bala Patil* v. *Ganpati Ramchandra Naikwade*, (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196.

Bench Strength **2**. Coram: **C.K. Prasad** and *V. Gopala Gowda*, JJ. [Date of decision: 29-7-2013]

Rama Dattu Naikwade v. Govinda Bala Patil, (2003) 3 Mah LJ 157, reversed

5. BOMBAY TENANCY AND AGRICULTURAL LANDS RULES, 1956

— **R. 25-C** *See* 'Gujarat Tenancy and Agricultural Lands Act, 1948 (Bom Act 47 of 1948)', S. 43 r/w R. 25-C of the 1956 Rules, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161

6. CEILING ON LAND

(a) Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (11 of 1973)

[921] — Ss. 15(2) and 40 — Reopening of ceiling proceedings already concluded under Rajasthan Tenancy Act, 1955 — State Government's power under S. 232 of 1955 Act saved by opening words of S. 15(2) of 1973 Act — *Application under S. 232 of 1955 Act filed by Tahsildar seeking reopening and cancellation of final decision taken in ceiling proceedings under 1955 Act and for referring matter to Revenue Board — Notice issued to appellant landholder by District Collector fixing a date — Notice challenged by appellant by filing writ petition which High Court dismissed — Held, notice having been issued only to make enquiry into the matter, the same cannot be held to be bad at this stage as appellant would only face enquiry — No interference called for with High Court's order — Contention that Tahsildar's application was barred by limitation, raised by appellant, can be raised before authorities concerned — Rajasthan Tenancy Act, 1955 (3 of 1955), S. 232. Vikram Singh* v. *State of Rajasthan*, (2014) 11 SCC 238: (2014) 4 SCC (Civ) 79.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-4-2014]

Vikram Singh v. State of Rajasthan, (2002) 3 WLC 17 (Raj), affirmed

(b) Urban Land (Ceiling and Regulation) Act, 1976

— **Ss. 8, 9, 10 and 20** *See* 'Ceiling on Land' — Urban Land (Ceiling and Regulation) Repeal Act, 1999, S. 3, (2013) 11 SCC 486: (2014) 1 SCC (Civ) 590

[922] — Ss. 10(3) to (6) (Repealed in 1999) — De facto possession of acquired land not taken prior to passing of Repeal Act of 1999 — *Held, in absence of any evidence to show that appellant had voluntarily surrendered, or respondents had taken peaceful or forcible possession of lands, respondents had only de jure possession before coming into force of the Repeal Act — Since de facto possession of lands was not taken before execution of possession receipt, respondent cannot hold on to lands in question which are legally owned and possessed by appellants. Gajanan Kamlya Patil* v. *Addl. Collector & Competent Authority*, (2014) 12 SCC 523: (2014) 5 SCC (Civ) 130: AIR 2014 SC 1843: (2014) 2 CTC 665: (2014) 103 ALR 717: (2014) 136 AIC 264: (2014) 3 LW 60.

Bench Strength **2**. Coram: **K.S.P. Radhakrishnan** and *Vikramajit Sen*, JJ. [Date of decision: 14-2-2014]

State of U.P. v. Hari Ram, (2013) 4 SCC 280: (2013) 2 SCC (Civ) 583, applied

Gajanan Kamlya Patil v. Addl. Collector and Competent Authority, WP (C) No. 1669 of 2010, order dated 12-7-2010 (Bom), reversed

Stroud's Judicial Dictionary, 5th Edn., Vol. VI, cited

— **Ss. 20 and 21** *See* LOCAL GOVERNMENT — 'Town Planning' — Allotment/Auction of Flats/Plots/Houses/Shops by Housing Board/Development Authority, (2012) 13 SCC 165: (2014) 2 SCC (Civ) 49

(c) Urban Land (Ceiling and Regulation) Repeal Act, 1999

[923] — S. 3 — Saving section — Exemption from ceiling — Reconsideration thereof, after land had been notified and possession had been taken under Urban Land (Ceiling and Regulation) Act, 1976 — Impermissibility of — *Competent authority rejected application of Respondent for exemption — Single Judge of High Court confirmed order of rejection whereas Division Bench of High Court directed competent authority to reconsider case of Respondent — Untenability of — Held, on repeal of the 1976 Act by the 1999 Repeal Act, only actions which have been saved are the actions as set out in Ss. 3(1)(a), (b) and (c) of the 1999 Repeal Act — Claim of Respondent under the Noti. dt. 6-10-1997 was at the most a claim of acquiring a right whereas it was not an enforcement of accrued right — Such claim of acquiring a right under relevant notification was not saved under S. 3 at all — Hence, competent authority not bound to reconsider case of respondent — Further as question regarding nature of possession required investigation, matter remanded to Division Bench — Urban Land (Ceiling and Regulation) Act, 1976, Ss. 8, 9, 10 and 20*

(Paras 13 and 14). *State of Gujarat* v. *Gyanaba Dilavarsinh Jadega*, (2013) 11 SCC 486: (2014) 1 SCC (Civ) 590.

Bench Strength **2**. Coram: *R.M. Lodha* and *H.L. Gokhale*, JJ. [Date of decision: 17-4-2012]

Gyanba Dilavarsinh Jadeja v. State of Gujarat, LPA No. 225 of 1994, order dated 17-6-2008 (Guj), partly affirmed and partly reversed

7. CONSOLIDATION

— Nature of — Distinguished from acquisition of land *See* LOCAL GOVERNMENT — 'Town Planning' — Gujarat Town Planning and Urban Development Act, 1976 (Presi. Act 27 of 1976), Ss. 40, 45(2)(a), (b), (c), 48-A, 52, 53(a), 67, 77, 80, 81, 82, 84 and 85, (2014) 7 SCC 357: (2014) 3 SCC (Civ) 710

[924] — Consolidation proceedings — Generally — Powers and duties of a Consolidation Officer — Obligations while passing consolidation order — *Respondent-Defendant 1 having only half-share in ancestral property in question — She obtaining consolidation order on basis of fraud and getting her name recorded in revenue records also in relation to half-share of appellant in said property — Though objection was raised thereagainst during consolidation proceedings by illiterate appellant, it was later withdrawn by appellant — Questions as to why objection was not pressed by appellant and whether appellant was rightful heir having half-share in disputed property, not gone into by Consolidation Officer — Consolidation Officer accepted the withdrawal of objection by appellant without examining the alleged statement of appellant and verifying the correctness of the same — Evidence on record that appellant was entitled to be recorded in revenue records as half-share owner of land in dispute — On these facts, held, Consolidation Officer also committed fraud on appellant — He did not discharge his duties properly — He permitted a gross miscarriage of justice to continue by recording the name of Defendant 1 as the only rightful heir to the land in dispute — Thus, Consolidation Officer's order declared to be null and void — Appellant consequently held to be half-share owner of land in question — Competent authority directed to enter the name of appellant in revenue records as half-share owner — U.P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 49* (Paras 19 to 22). *Amar Nath* v. *Kewla Devi*, (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 22-4-2014]

Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702: (1956) 2 WLR 502: (1956) 1 All ER 341 (CA), considered

8. GUJARAT TENANCY AND AGRICULTURAL LANDS ACT, 1948 (BOM ACT 47 OF 1948)

[925] — S. 43 — Requirement of previous sanction of Collector and payment of requisite consideration (premium) for transfer of any land under — Calculation of amount of premium as per Jantri rates — Applicable rate — Material date of — *Held, Jantri rate to be applied will be date of the sanction by the Collector, and not date of application made by the party* (Para 21). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength **2**. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

[926] — S. 43 — Requirement of prior sanction of Collector for transfer of land — Time period within application to be decided — *Collector is expected to decide such applications as far as possible within 90 days from receipt of application — Held, in the event the application is not decided within 90 days, Collector to record reasons why decision is delayed* (Para 24). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength **2**. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

[927] — S. 43 — Transfer of land purchased by tenant subject to permission of Collector and on payment of requisite consideration (premium) as determined by State Government — Premium payable for, based on Jantri rates for valuation of land (rates fixed for purpose of valuation of land for levying stamp duty under Bombay Stamp Act) — Nature of — *Held, amount charged is neither a tax nor a fee — It is a premium for granting the sanction — Constitution of India, Art. 265* (Paras 17 to 20 and 25). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength **2**. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

Gohil Jesangbhai Raysangbhai v. Collector, Special Civil Application No. 12661 of 1994, order dated 30-11-1994 (Guj); Gohil Jesangbhai Raysangbhai v. State of Gujarat, LPA No. 1127 of 2008, decided on 3-5-2011 (Guj), affirmed

Shashikant Mohanlal Desai v. State of Gujarat, AIR 1970 Guj 204, approved

[928] — S. 43 r/w R. 25-C of the 1956 Rules — Conditions subject to which sanction shall be given by the Collector for transfer of land under S. 43 — Scope of — *Held, R. 25-C does not create any restriction on the provisions under S. 43 — In*

fact, it makes it clear that transfer of an agricultural land for non-agricultural purpose is not easy — It is only sub-clause (e) thereof under which such a transferor will have to make his case which is when a transfer is sought for a bona fide purpose — Even so, this does not absolve one from taking any prior sanction — It will only mean that if the application is bona fide, normally the transfer will be sanctioned, because as such there is no right to insist on a transfer for non-agricultural purpose — Bombay Tenancy and Agricultural Lands Rules, 1956, R. 25-C (Para 22). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength 2. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

Gohil Jesangbhai Raysangbhai v. State of Gujarat, LPA No. 1127 of 2008, decided on 3-5-2011 (Guj), affirmed

[929] — Ss. 43 and 63 — S. 43 imposing restrictions on transfer of land purchased or sold under the Act — Validity — Resolution dt. 4-7-2008 passed by Government of Gujarat to give effect to S. 43, which fixed the rates of premium to be paid to the State Government for converting, transferring, and for changing the use of land from agricultural to non-agricultural purposes — Held, valid — *Amount charged is a premium for granting the sanction — This is because under this welfare statute lands have been permitted to be purchased by the tenants at a much lesser price — A benefit is acquired by the tenant under the scheme of the statute, and therefore, he must suffer the restrictions which are also imposed under the same statute — Premium charged is also to make such transfers to non-agricultural purpose unattractive — Intention of the statute is reflected in S. 43 — Transfer of Property Act, 1882, Ss. 10 and 11* (Paras 1 to 9). *Gohil Jesangbhai Raysangbhai* v. *State of Gujarat*, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161: AIR 2014 SC 3687.

Bench Strength 2. Coram: *S.S. Nijjar* and **H.L. Gokhale**, JJ. [Date of decision: 25-2-2014]

Gohil Jesangbhai Raysangbhai v. Collector, Special Civil Application No. 12661 of 1994, order dated 30-11-1994 (Guj); Gohil Jesangbhai Raysangbhai v. State of Gujarat, LPA No. 1127 of 2008, decided on 3-5-2011 (Guj), affirmed

Shashikant Mohanlal Desai v. State of Gujarat, AIR 1970 Guj 204, approved

9. JURISDICTION

[930] — Exclusion of jurisdiction of civil court in revenue matters — Bar under S. 49, U.P. Consolidation of Holdings Act, 1953 and S. 331, U.P. Zamindari Abolition and Land Reforms Act, 1950 — Applicability of, in present case — Determination — Respondent-Defendant 1 having only half-share in ancestral property in question — *She obtaining consolidation order on basis of fraud and getting her name recorded in revenue records also in relation to half-share of appellant-plaintiff in said property — Civil suit filed by appellant for possession of his half-share based on his title therein, along with prayer to quash the aforesaid consolidation order — Matter involving determination of issue as to appellant's right to property in question based on inheritance from his father — Held, such a civil suit was not barred by S. 49, U.P. Consolidation of Holdings Act, 1953 and S. 331, U.P. Zamindari Abolition and Land Reforms Act, 1950 — Hence, objections raised on basis thereof, not tenable — U.P. Consolidation of Holdings Act, 1953 (5 of 1954), S. 49 — U.P. Zamindari Abolition and Land Reforms Act, 1950 (1 of 1951), S. 331 — CPC, 1908, S. 9 — Specific Relief Act, 1963, Ss. 5, 34 and 35* (Paras 17 and 18). *Amar Nath* v. *Kewla Devi*, (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85.

Bench Strength 2. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 22-4-2014]

Suba Singh v. Mahendra Singh, (1974) 1 SCC 418, followed

10. KARNATAKA CERTAIN INAMS ABOLITION ACT, 1977 (10 OF 1978)

— S. 4(2)(b) *See* 'Karnataka Land Reforms Act, 1961 (10 of 1962)', Ss. 41(2), 126 and 130, (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550

11. KARNATAKA LAND REFORMS ACT, 1961 (10 OF 1962)

— Ss. 4, 48-A(1), 45, 128, 129 and 133 (as amended by Act 1 of 1974) *See* 'Occupancy Rights/Tenant/Tenancy', (2012) 13 SCC 759: (2014) 5 SCC (Civ) 419

[931] — Ss. 41(2), 126 and 130 — Recovery of possession from unauthorised occupant of land by party in whose favour occupancy rights granted — Jurisdiction of Tahsildar — Proper exercise of power by Tahsildar — *Inam land held by appellant Mutt, mortgaged by appellant Mutt to respondents who were put in possession prior to coming into force of Karnataka Certain Inams Abolition Act, 1977 — After commencement of 1977 Act, by virtue of S. 4(2)(b) thereof, all inams having stood abolished, appellant's application for grant of occupancy rights allowed by Land Tribunal on 11-2-1993 — Challenge by respondents to Tribunal's order dismissed by Division Bench of High Court and in absence of any appeal, grant of occupancy rights in favour of appellant stood confirmed — Subsequently, Form 2 certificate also issued in*

favour of appellant — Application filed by appellant Mutt before Tahsildar for eviction of respondents as unauthorised occupants, allowed directing eviction of respondents and putting appellants in possession — In writ petition challenging Tribunal's order, Single Judge of High Court held that Tahsildar had jurisdiction under the 1961 Act to consider appellant's application — But having regard to serious illegalities committed by Tahsildar, Single Judge of High Court directed Tahsildar to consider matter afresh on merits — In appeal, Division Bench of High Court held that Tahsildar lacked jurisdiction since rights of respondents as mortgagees prescribed a different status and Ss. 41, 130 and 10 of 1961 Act were not invocable — But Supreme Court on 13-2-2009, (2009) 11 SCC 28, allowed appeal preferred by appellant Mutt and remitted matter back to Division Bench of High Court for fresh consideration making it clear that issue relating to applicability of S. 43 of Transfer of Property Act raised before High Court stood closed by virtue of S. 4(2)(b) of 1977 Act — After remand, Division Bench of High Court proceeded to examine two issues viz. firstly *whether inamdar, who had been granted rights under 1977 Act, could invoke S. 41 of 1961 Act to recover possession from a person who was not a tenant of the land; and* secondly *whether order passed by Tahsildar was sustainable on merits — Division Bench of High Court held that neither S. 41 nor S. 126 nor S. 130 of 1961 Act were invocable and that Tahsildar's order was liable to be set aside as it was passed by manipulating proceedings — Held, after remand, Division Bench of High Court was not justified in reopening questions already dealt with by Supreme Court in its judgment dt. 13-2-2009, (2009) 11 SCC 28 — After grant of occupancy rights in favour of appellant, continued possession of respondents became unauthorised and appellant Mutt had right to invoke protection of 1961 Act for working out its remedy based on grant of occupancy rights by implementing order dt. 11-2-1993 of Land Tribunal — Tahsildar had jurisdiction to deal with application of appellant for working out its remedy — However, in view of malpractices indulged in by Tahsildar, remand order passed by Single Judge of High Court restored — Karnataka Certain Inams Abolition Act, 1977 (10 of 1978), S. 4(2)(b). Ni Pra Channabasava Deshikendra Swamigalu Matadhipathigalu Kannada Mutt* v. *C.P. Kaveeramma*, (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and **F.M. Ibrahim Kalifulla**, JJ. [Date of decision: 6-5-2013]

C.P. Kalappa v. Tahsildar, (2005) 3 Kant LJ 249, affirmed

Ni Pra Channabasava Deshikendra Swamigalu v. C.P. Kaveeramma, ILR 2009 KAR 4429: (2010) 2 Kant LJ 144, reversed

Nipra Channebasava Deshikendra Swamigalu Matadhipathigalu v. C.P. Kaveeramma, ILR 2008 KAR 805, held, reversed

[932] — S. 48-A — Occupancy tenant — Enquiry and Finding of Land Tribunal as to — Extent to which binding — *Photocopy of Form 7 produced by R-2 claiming that he had already sent application in Form 7 for registering him as occupant of lands belonging to appellants — Although Tribunal found no proof of filing of Form 7 by R-2 but it admitted photocopy for enquiry under S. 48-A and upon evidence held that R-2 was not in occupation and cultivation of suit lands as tenant — In writ petition challenging Tribunal's order, High Court remitted matter to Tribunal to find out whether application in Form 7 existed in records and whether in fact R-2 had filed such application — Held, in view of definite finding rendered by Tribunal after admitting photocopy of application in Form 7 and making enquiry, it was not open to High Court to remand matter again to Tribunal to enquire whether Form 7 was on record or Form 7 was produced by R-2, as the same rendered Tribunal's order ineffective for no reason — Evidence Act, 1872, Ss. 63 and 65. Channabasappa* v. *State of Karnataka*, (2014) 13 SCC 688: (2014) 5 SCC (Civ) 771.

Bench Strength **2**. Coram: **S.J. Mukhopadhaya** and *Ranjan Gogoi*, JJ. [Date of decision: 17-9-2013]

Channabasappa v. State of Karnataka, Writ Appeal No. 3836 of 2005, decided on 2-6-2006 (KAR); Gangappa v. State of Karnataka, WP No. 15722 of 1997, order dated 3-6-2005 (KAR), reversed

12. KARNATAKA LAND REFORMS RULES, 1974

— R. 19(1) *See* 'Occupancy Rights/Tenant/Tenancy', (2012) 13 SCC 759: (2014) 5 SCC (Civ) 419

13. OCCUPANCY RIGHTS/TENANT/TENANCY

[933] — Deemed tenant — Proof — Entries in record of rights — Presumption of truthfulness — Rebuttal — *Entry made in record of rights on basis of vardhi given by statutory authority, showing creation of tenancy by widow of original owner of land in favour of appellant — No evidence showing that original owner inducted appellant as tenant or permitted him to cultivate the land — No evidence showing that before entering appellant's name in record of rights competent authority followed procedure prescribed under Sections 128 and 129 of Karnataka Land Reforms Act — Prior to creation of tenancy in favour of appellant, widow executed a registered gift deed in respect of the land in favour of respondent while retaining possession*

during her lifetime as maintenance and her subsequent suit for cancellation of gift deed as nullity on ground of being vitiated by fraud or misrepresentation, dismissed and judgment and decree of trial court confirmed by lower appellate court and High Court — But neither this fact brought to notice of competent authority nor any notice given to respondent in terms of S. 129(2) so as to enable him to file objections — Appellant also failed to explain serious discrepancies in record of rights and statement made by him and widow before Tribunal on issues of former's age and period of cultivation — Held, entry in record of rights cannot be presumed to be true and conclusive under S. 133 and same cannot be relied upon for entertaining appellant's claim for being declared as occupant for grant of occupancy right — Competent court having declared gift deed to be valid, appellant cannot be said to be lawfully cultivating the land and he cannot claim to be deemed tenant — Karnataka Land Reforms Act, 1961 (10 of 1962), Ss. 4, 48-A(1), 45, 128, 129 and 133 (as amended by Act 1 of 1974) — Karnataka Land Reforms Rules, 1974, R. 19(1) — Transfer of Property Act, 1882, Ss. 7, 8 and 122. Bhimappa Channappa Kapali v. *Bhimappa Satyappa Kamagouda*, (2012) 13 SCC 759: (2014) 5 SCC (Civ) 419.

Bench Strength **2**. Coram: *G.S. Singhvi* and *S.J. Mukhopadhaya*, JJ. [Date of decision: 17-10-2012]

Bhimappa Channappa Kapali v. Bhimappa Satyappa Kamagouda, ILR 2002 KAR 3055: (2003) 2 Kant LJ 148: (2002) 3 ICC 720, affirmed

[934] — Leasehold tenancy rights — Succession — Whether can be bequeathed — In absence of specific provisions in tenancy laws of State concerned, general law of succession will apply — *B original tenant of property owned by Bombay Municipal Corporation, bequeathed tenancy rights by will to his wife as residuary legatee — State Act, viz. Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, vide S. 4(1), exempted present tenancy from its purview — After death of* **B**, *a Parsi, his heirs including his widow and his five sons, treated by BMC as joint tenants and they also treated themselves as joint tenants — Widow bequeathed her nursery business to one of her son's* **D** *and appointed her daughter* **K** *as residuary legatee by will — Will not probated — Held, after demise of* **B**, *tenancy devolved upon his heirs including his widow by virtue of their being joint tenants under Succession Act — Will having not been probated,* **K** *cannot claim right on that basis in view of S. 213 of Succession Act — But nursery business devolved jointly on heirs of widow after her death — Succession Act, 1925, Ss. 213 and 52 — Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (57 of 1947), S. 4(1) — Transfer of Property Act, 1882, Ss. 105 and 108(j). Gaiv Dinshaw Irani* v. *Tehmtan Irani*, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318: AIR 2014 SC 2326: (2015) 1 Mah LJ 228.

Bench Strength **2**. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-4-2014]

Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683, followed

— Recovery of possession on basis of *See* PRACTICE AND PROCEDURE — 'Remand', (2013) 16 SCC 565: (2014) 5 SCC (Civ) 550

[935] — Relinquishment/surrender of joint tenancy in favour of one tenant — Revocation of consent to relinquish/surrender of tenancy — Subsequent transfer i.e. after the said revocation of tenancy rights by lessor (Municipal Corporation) in name of that one tenant — Validity — *Letter of joint tenants to Bombay Municipal Corporation (BMC) consenting to transfer of tenancy in name of one only of them* **D** *— Subsequent letter to BMC seeking only transfer of rent receipts in name of* **D** *— Joint representation made by tenants including* **D** *on basis of joint tenancy against eviction notice issued by BMC — Consent letter positively revoked by joint tenants in pleading in their suit against eviction order passed by BMC — Suit decreed by trial court and specific findings of trial court not challenged — Consent expressly revoked by letter addressed by tenants to BMC which also acted as a notice under S. 527 of BMC Act — But based on consent letter BMC transferred tenancy in favour of* **D** *after 20 yrs without following due process by inviting objections — Held, purported letter of consent has no legal validity and does not amount to surrender or relinquishment of tenancy rights in favour of* **D** *— Transfer of tenancy by BMC in favour of* **D** *on basis of that letter illegal and void ab initio — Conduct of BMC lacked bona fides — Consequently, all events which followed such transfer of tenancy also rendered void ab initio — Bombay Municipal Corporation Act, 1888 (3 of 1888), S. 527 — Transfer of Property Act, 1882, Ss. 111(e) & (f)*

The Bombay Municipal Corporation (BMC), being owner of the suit property, transferred tenancy of the property in occupation of joint tenants in the name of one of the tenants *D*. The other tenants (the respondents) on coming to know about the transfer of the tenancy, issued a notice under Section 527 of the Bombay Municipal Corporation Act, 1888 and subsequently filed a suit challenging the transfer of the tenancy. During pendency of the suit *D* agreed to surrender the tenancy in respect of

the suit premises in favour of BMC and the Corporation in exchange granted a lease of sixty years on a part of the suit premises, being land admeasuring 1152 sq m and the lease deed was executed. *D* began construction on the said plot. The respondents filed another suit challenging the surrender of tenancy and grant of fresh lease in favour of *D*. The respondents sought certain interim relief and the trial court granted an interim injunction restraining the defendants in the suit from disturbing the possession of the plaintiffs of certain parts of the bungalow which was occupied by them. Dissatisfied with this order, the respondent-plaintiffs preferred an appeal and the Single Judge of the High Court passed an order allowing the defendants to proceed with the construction work subject to the condition that during the pendency of the appeal and ninety days after the defendants were to retain five flats and rights arising therefrom. The trial court later dismissed both the suits. The respondents preferred two appeals. The High Court by a common judgment and order allowed both the appeals and held that the respondent-plaintiffs were joint tenants with *D* (Defendant 2) and consequently, the surrender of tenancy by Defendant 2 in favour of BMC was illegal and the transfer of tenancy by BMC in the name of Defendant 2 was incorrect, void and not binding upon the plaintiffs. Resultantly, the judgments and orders of the trial court were set aside and the reliefs prayed for in the suits filed by the plaintiffs were allowed by the High Court. The High Court further directed the defendants to immediately place the plaintiffs in possession of the five flats which were kept reserved by virtue of the interim orders passed by the High Court from time to time; and the stay on Bombay Municipal Corporation regarding the development of the remaining property was directed to be vacated.

The present appeals raised two primary issues:

Firstly, the issue of rights over the tenancy; and *secondly*, the validity of the judgment and order of the High Court was challenged on the ground that it is in excess of powers of an appellate court under Section 96 CPC.

Dismissing the appeals,

Held :

(1) The divesting of tenancy rights by means of a will is a highly debated topic and is subject to the tenancy laws of the State concerned. In general tenancies are to be regulated by the governing legislation, which favour that tenancy be transferred only to family members of the deceased original tenant. However, in absence of any specific provisions, general laws of succession shall apply. (Paras 32 and 39)

In the present matter, the tenancies being the suit premises are owned by the local authority of Mumbai and are subject to the State Act being the Bombay Rents, Hotel And Lodging House Rates Control Act, 1947, since repealed, which as per Section 4(1) exempted the present tenancy from its purview. The tenancy, allegedly by means of a will, were bequeathed by *B* to his wife. Such transfer appears to be permissible. However, as the legal position regarding the permissibility of bequeathing a tenancy by a will was not decided, the admissions of the parties in regard to the same have to be relied on. By doing so it is clear that the tenancy was jointly held by the widow of *B* and her sons and the same devolved upon her sons on her death by virtue of their being joint tenants and heirs under the Succession Act. Furthermore, the widow only bequeathed the nursery business and not the tenancy to *D* and appointed her daughter as residuary legatee by means of a will. In view of Sections 213 and 52 of the Succession Act the florist/nursery business devolved jointly on the heirs of the widow after her death. Therefore, the claim of the appellants that the they had exclusive rights over the nursery business does not hold good. (Paras 32, 40 and 41)

The purported consent letter does not have any validity in law and does not amount to surrender or relinquishment of rights of the original plaintiffs in the suit premises. When the joint tenants were served with an eviction notice, then for the sake of convenience only the "purported" letter of consent was issued. The consent letter was also positively revoked. Thus, the tenancy rights were never transferred exclusively in the name of *D*. The transfer of the tenancy rights by BMC in favour of *D* based on the purported consent letter was illegal and reliance on the same by BMC was misplaced. The facts clearly indicate that no due process was followed wherein objections were sought after the transfer and no proper transfer was made. The High Court has correctly opined that the conduct of BMC lacked bona fides and the same has not been challenged by BMC being Respondent 6. (Paras 43 to 45)

Therefore, it must be held that the transfer of tenancy by BMC in the name of *D* is illegal and void ab initio. Consequently, all the events that follow, being the surrender of part of the tenancy by *D* to BMC in lieu of the new plot allotted to him, are also rendered void ab initio. (Para 46)

(2) Since the lease of 1152 sq m executed by BMC in favour of *D* is rendered void ab initio, the

construction by the appellants on the said plot is also illegal. The position as it exists today is that the remaining portions of the property have been acquired by BMC; and on the other portion, the structure erected by *D* exists and the portion being the residential bungalow occupied by the respondents may also be acquired by BMC in due course. (Para 47)

Considering the aforementioned changed circumstances, the High Court taking note of the subsequent events moulded the relief in the appeal under Section 96 CPC. In ordinary course of litigation, the rights of parties are crystallised on the date the suit is instituted and only the same set of facts must be considered. However, in the interest of justice, a court including a court of appeal under Section 96 CPC is not precluded from taking note of developments subsequent to the commencement of the litigation, when such events have a direct bearing on the relief claimed by a party or on the entire purpose of the suit, the courts taking note of the same should mould the relief accordingly. When the relief otherwise awardable on the date of commencement of the suit would become inappropriate in view of the changed circumstances, the courts may mould the relief in accordance with the changed circumstances for shortening the litigation or to do complete justice. Even the Supreme Court while exercising its powers under Article 136 of the Constitution can take note of subsequent events. (Paras 48, 52 and 53)

The appellants during the pendency of the civil suits sought interim orders from the High Court and on the basis of its order constructed the structure on the condition that rights of five flats were to be retained and they were subject to the outcome of the suit. In another order the appellants were once again restrained from the creation of third-party rights with respect to the five demarcated flats. The appellants being well aware of the risks and consequences, carried on with the construction. During the pendency of the first appeal, the appellants had given two of the five flats on leave and licence and continued to enjoy benefits from the same since 1997. The appellants are occupying two of the other nine flats and benefits from the remainder are being enjoyed by them. In the wake of above, the High Court taking note of the subsequent events has correctly moulded the relief and allotted five flats to Respondents 1 to 5 as per their share. The appellants cannot shift the onus on BMC. (Paras 54 to 56). *Gaiv Dinshaw Irani* v. *Tehmtan Irani*, (2014) 8 SCC 294: (2014) 4 SCC (Civ) 318: AIR 2014 SC 2326: (2015) 1 Mah LJ 228.

Bench Strength 2. Coram: *Gyan Sudha Misra* and **P.C. Ghose**, JJ. [Date of decision: 25-4-2014]

Gian Devi Anand v. Jeevan Kumar, (1985) 2 SCC 683, followed

Tehmtan v. Municipal Corpn. of Greater Bombay, (2005) 6 Bom CR 808, affirmed

14. ORISSA COMMUNAL, FOREST AND PRIVATE LANDS (PROHIBITION OF ALIENATION) ACT, 1948 (1 OF 1948)

— S. 2(d) *See* CONSTITUTION OF INDIA — 'Article 226' — Exercise of power under Art. 226 by High Court — Relief — Issues in question not determined, Arts. 226 and 136, (2012) 13 SCC 419: (2014) 5 SCC (Civ) 654

15. OWNERSHIP AND TITLE TO THE LAND

— Entries in revenue records — Value of — Reiterated, do not confer any title *See* PROPERTY LAW — 'Ownership and Title', (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

— Grant of patta — If confers title *See* PROPERTY LAW — 'Ownership and Title', (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

— Suit for declaration of title and possession — Burden of proof in respect of — Lies on plaintiff, irrespective of whether defendants proved their case or not — Weakness of case set up by defendants cannot be a ground to grant relief to plaintiff *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 34 and 5, (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

16. PUNJAB OCCUPANCY TENANTS (VESTING OF PROPRIETARY RIGHTS) ACT, 1952 (8 OF 1953)

— Ss. 2(f) and 3 *See* 'Punjab Tenancy Act, 1887 (16 of 1887)', Ss. 10, 8 and 5, (2012) 13 SCC 269: (2014) 5 SCC (Civ) 621

17. PUNJAB TENANCY ACT, 1887 (16 OF 1887)

— Ss. 8 and 5 *See* INTERPRETATION OF STATUTES — 'Basic Rules' — Contextual construction/meaning, (2012) 13 SCC 269: (2014) 5 SCC (Civ) 621

[936] — Ss. 10, 8 and 5 — Occupancy tenant — Joint owner — Expression "any person" in S. 8 does not include joint owner — *Appellants/predecessors-in-interest in uninterrupted cultivatory possession as hissedars/joint owners/co-owners of shamilat deh land from a period prior to 1935-1936 and paying nominal rent to Gram Panchayat — Possession had been unauthorised but Gram Panchayat never admitted appellants as tenants as no agreement existed between appellants and Gram Panchayat creating any tenancy in favour of appellants — Held, appellants not entitled to occupancy right as S. 10 puts complete embargo on such joint owners/hissedars to claim such relief — S. 4(3)(ii) of Punjab Village Common Lands (Regulation) Act, 1961 not applicable — Punjab*

Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 (8 of 1953), Ss. 2(f) and 3

The High Court held that the expression "any person" contained in Section 8 of the Tenancy Act referred only to the person mentioned in Section 5, which was a tenant. This section only provides that any person can establish a right of occupancy on any ground other than the ones specified in Section 5, and that as the appellants had never been tenants, the question of granting them occupancy rights could, therefore, not arise. The appellants had been joint owners prior to the year 1953. Till date, the revenue record depicts them as joint owners. Section 10 of the Tenancy Act puts an embargo on joint owners to claim occupancy rights. In the appeals before the Supreme Court, it has been canvassed on behalf of the appellants that as Section 8 of the Tenancy Act contains the expression "any person" and not the "tenant". It cannot be restricted to mean a "tenant", for the reason that had this been the intention of the legislature, the expression "tenant" itself could have been used under Section 8. Therefore, all together, a different meaning is to be given to the said expression.

Dismissing the appeals,

Held :

The word "any person" has to be understood in the context that was intended by the legislature with respect to the Tenancy Act, keeping in mind the purpose for which the statute was enacted. The provisions of the Act, thus, have to be construed to achieve the purpose of its enactment. The Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part, considering the context and the subject of the said statute. (Para 18)

Generally, the phrase "any person" should be given the widest possible import, and the words may cover persons other than those mentioned in various other provisions of the statute. But, if the statutory provisions suggest, that the legislature itself has intended to give a restricted meaning to the phrase "any person", then it is not open to the court to give a wide or unrestricted meaning to the words "any person". (Para 20)

The High Court opined that the expression "any person", contained in Section 8 does not include a joint owner (hissedar). It has been admitted by the parties that the appellants and their ancestors were hissedars/joint owners/co-sharers in the shamilat deh from a period prior to even 1935-1936. Section 10 of the Tenancy Act puts a complete embargo on a hissedar/joint owner to claim occupancy rights. There is no agreement between the appellants and the Gram Panchayat creating any tenancy in their favour. Granting the relief to the appellants would amount to ignoring the existence of Section 10 itself and it would be against all norms of interpretation which require that statutory provisions must be interpreted in such a manner as not to render any of its provision otiose unless there are compelling reasons for the court to resort to that extreme contingent. (Paras 27 and 28)

Therefore, there is no cogent reason to interfere with the well-reasoned judgment of the High Court. (Para 29). *Tara Chand* v. *Gram Panchayat, Jhupa Khurd*, (2012) 13 SCC 269: (2014) 5 SCC (Civ) 621.

Bench Strength **2**. Coram: **Dr B.S. Chauhan** and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 6-11-2012]

Puran v. Gram Panchayat, Faridabad, (2006) 2 SCC 433, considered but distinguished on facts

Tara Chand v. Financial Commr., WP (C) No. 13985 of 2001, decided on 18-9-2002 (P&H), affirmed

18. PUNJAB VILLAGE COMMON LANDS (REGULATION) ACT, 1961 (18 OF 1961)

— Ss. 4(3)(ii), 7 and 11 *See* 'Punjab Tenancy Act, 1887 (16 of 1887)', Ss. 10, 8 and 5, (2012) 13 SCC 269: (2014) 5 SCC (Civ) 621

19. RAJASTHAN LAND REVENUE ACT, 1956 (15 OF 1956)

— S. 91 *See also* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 38, 5 and 6, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669

[937] — S. 91 — Eviction — If after eviction, evicted person re-enters possession of land, fresh eviction proceedings have to be initiated in accordance with law against him — *Specific Relief Act, 1963, S. 6*

Even according to the respondent, subsequent to the alleged eviction in 1965, the appellant re-entered possession of the suit property. In that case if the respondent desires to evict the appellant again, the same must be done in accordance with law by initiating appropriate proceedings. Until such process of eviction in accordance with law is initiated, the appellant's possession of the suit property is required to be protected. It appears that the respondent was under the belief that once Section 91 of the Rajasthan Land Revenue Act was invoked (in 1965), such an invocation for evicting the appellant summarily can eternally be relied upon by anybody for evicting the appellant. Law does not sanction such process. (Paras 13 to 15). *Ram Daan* v. *Urban Improvement Trust*, (2014) 8 SCC 902: (2014) 4 SCC (Civ) 669: (2015) 1 MPLJ

3: (2014) 106 ALR 705: (2014) 142 AIC 227: (2015) 1 Mah LJ 34.

Bench Strength 2. Coram: **Jasti Chelameswar** and *Dr A.K. Sikri*, JJ. [Date of decision: 1-8-2014]

20. RAJASTHAN TENANCY ACT, 1955 (3 OF 1955)

[938] — S. 42 proviso (as *ins.* by amending Act 27 of 1956) — Transfer of landholding by member of Scheduled Caste in favour of person not belonging to Scheduled Caste — Held, forbidden and unenforceable under proviso — *Hence, such transfer also unlawful under S. 23 of Contract Act and agreement of such transfer void under S. 2(g) of Contract Act — Contract Act, 1872, Ss. 23 and 2(g) — Transfer of Property Act, 1882, Ss. 10 and 54* (Paras 22, 27 and 29). *Ram Karan* v. *State of Rajasthan*, (2014) 8 SCC 282: (2014) 4 SCC (Civ) 306: AIR 2014 SC 3070: (2014) 106 ALR 240: (2014) 141 AIC 184.

Bench Strength 2. Coram: **S.J. Mukhopadhaya** and *Kurian Joseph*, JJ. [Date of decision: 30-6-2014]

Triveni Shyam Sharma v. Board of Revenue, AIR 1965 Raj 54, distinguished

[939] — Ss. 175 and 42 — Limitation period for filing ejectment case — Period should be reasonable when no period is prescribed — Relevant factors for determining reasonable period — Unreasonable delay — *Sale of landholding effected in 1962 in violation of prohibition under S. 42 — Land mutated in vendee's name in 1963 — No action taken by vendors for restoration of land in their favour — Suit for ejectment of vendees filed by Tahsildar after 31 yrs in 1993 — Application for appointment of Receiver filed in that suit, rejected by Assistant Collector by holding that vendee had been in possession and cultivating suit land for 32 yrs — Held, ejectment suit filed beyond reasonable period of limitation, hence barred by limitation and not maintainable* (Paras 34 to 39). *Ram Karan* v. *State of Rajasthan*, (2014) 8 SCC 282: (2014) 4 SCC (Civ) 306: AIR 2014 SC 3070: (2014) 106 ALR 240: (2014) 141 AIC 184.

Bench Strength 2. Coram: **S.J. Mukhopadhaya** and *Kurian Joseph*, JJ. [Date of decision: 30-6-2014]

Nathu Ram v. State of Rajasthan, (2004) 13 SCC 585, applied

Ram Karan v. State of Rajasthan, Special Appeal Writ No. 557 of 2002, decided on 2-2-2012 (Raj); Ram Karan v. State, WP (C) No. 639 of 1996, order dated 23-5-2002 (Raj), reversed

— **S. 232** *See* 'Ceiling on Land' — Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (11 of 1973), Ss. 15(2) and 40, (2014) 11 SCC 238: (2014) 4 SCC (Civ) 79

21. REVENUE RECORDS

— **Entries in — Value of — Whether confer any title** *See* PROPERTY LAW — 'Ownership and Title', (2014) 2 SCC 269: (2014) 2 SCC (Civ) 66

22. REVISION

[940] — Reappreciation of evidence by Revisional Court/Tribunal — When can findings of lower court/authority be said to be perverse — Interference with findings of Revisional Authority in writ jurisdiction — When warranted — *Proceedings initiated under S. 32-G of Bombay Tenancy and Agricultural Lands Act on plea that respondents be deemed to have purchased land in question — Proceedings dropped under S. 43-A of said Act by Additional Tahsildar on finding that land was leased out for growing sugarcane — In appeal thereagainst, Sub-Divisional Officer, while referring to statement of landlord and his witnesses that land was leased out for growing sugarcane, rejected their evidence on ground that landlord and witnesses failed to prove specific purpose of lease beyond reasonable doubt — In revision, on basis of evidence of landlord and his witnesses and record-of-rights, Tribunal came to conclusion that land was leased for purpose of cultivation of sugarcane and accordingly set aside order of SDO and restored that of Additional Tahsildar — In writ petition, High Court set aside Tribunal's findings without assigning any reason, by merely stating that findings recorded by SDO were consistent with evidence on record and approach adopted by him was correct, proper and legal and that in such circumstances it was beyond jurisdiction of Tribunal to dislodge it in revision — Held, findings recorded by SDO are perverse — SDO's view that purpose of lease had to be proved beyond reasonable doubt is erroneous since such proceedings are required to be decided on preponderance of probabilities — SDO also erred in rejecting evidence of landlord without assigning reasons and jumped to conclusion without evidence — Hence Tribunal acted within its jurisdiction in setting aside the same on reappreciation of evidence — High Court erred in setting aside order of Tribunal — Order of Tribunal, restored — Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948), Ss. 32-G and 43-A — Constitution of India, Art. 226 — CPC, 1908, S. 115 — Words and Phrases — "Perverse" findings — Evidence Act, 1872, Ss. 101 to 103 — Transfer of Property Act, 1882, S. 108(o). Govinda Bala Patil* v. *Ganpati Ramchandra Naikwade*, (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196.

Bench Strength 2. Coram: **C.K. Prasad** and *V. Gopala Gowda*, JJ. [Date of decision: 29-7-2013]

23. U.P. CONSOLIDATION OF HOLDINGS ACT, 1953 (5 OF 1954)

— **S. 48** *See also* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Questions of Fact, Art. 226, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323

[941] — S. 48 — Scope of jurisdiction of revisional authority — Interference with concurrent findings of subordinate authorities — Justified only when subordinate authorities exceed their jurisdiction — *Held on facts, when subordinate authorities were within their jurisdiction revisional authority had no jurisdiction to reverse their concurrent findings on basis of new facts by admitting secondary evidence — Findings and order of subordinate authorities, restored — CPC, 1908, S. 115*

The father of the appellants, *M* and *S* were three shareholders of the land which was recorded in the name of one *B*. The appellants filed objections before the Consolidation Officer for deletion of the name of *B* alleging that the same was fictitiously entered in the revenue records. Respondents 1 and 2, claiming to be beneficiaries of a will allegedly executed by *B* in their favour, also filed their objections. The Consolidation Officer accepted the objections of the appellants and deleted the name of *B* from the revenue records. The respondents filed an appeal before the Assistant Settlement Officer but the same was dismissed. The respondents then preferred revision petition before the Deputy Director, Consolidation under Section 48 of the U.P. Consolidation of Holdings Act. The respondents produced certified copies of documents executed in 1934 showing that the share of the appellants' father was purchased by *B* in auction-sale. The revisional authority, by placing reliance on the document relating to the auction-sale, found that *B*'s name in the revenue records of the land in question had been registered as a co-owner even after abolition of zamindari and upheld the claim of the respondents that *B* had purchased the share of the appellants' father in the auction-sale. The appellants filed a writ petition against the order of the revisional authority. They urged before the High Court that the revisional authority could not have accepted the secondary evidence at the stage of revision and reversed the concurrent findings of the appellate authority. The Single Judge of the High Court dismissed the writ petition.

Allowing the appeal and restoring the order of the Consolidation Officer as affirmed by the appellate authority,

Held :

Section 48 of the Act is in pari materia with Section 115 of the Code of Civil Procedure, 1908. The power of the revisional authority under Section 48 of the Act only extends to ascertaining whether the subordinate courts have exceeded their jurisdiction in coming to the conclusion. Therefore, if the original and the appellate authorities are within their jurisdiction, the revisional authority cannot exceed its jurisdiction to come to a contrary conclusion by admitting new facts either in the form of documents or otherwise, to come to the conclusion. The revisional authority exceeded its jurisdiction under Section 48 of the Act by admitting documents at revision stage and altering the decision of the subordinate courts. (Paras 15 to 17)

The High Court has erred in concurring with the findings of the revisional authority by failing to observe that the revisional authority had exceeded its jurisdiction conferred upon it under the Act. It has further erred in concurring with the decision of the revisional authority on the factual grounds which is beyond the jurisdiction of it. (Paras 18 to 21). *Jagdamba Prasad* v. *Kripa Shankar*, (2014) 5 SCC 707: (2014) 3 SCC (Civ) 323.

Bench Strength 2. Coram: *Gyan Sudha Misra* and **V. Gopala Gowda**, JJ. [Date of decision: 4-4-2014]

Sher Singh v. Director of Consolidation, (1978) 3 SCC 172, followed

Jagdamba Prasad v. Director of Consolidation, Civil Misc. Writ No. 4688 of 1974, decided on 2-9-2003 (All), reversed

— **S. 49** *See* 'Consolidation', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

See also 'Jurisdiction', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

24. U.P. ZAMINDARI ABOLITION AND LAND REFORMS ACT, 1950 (1 OF 1951)

— **Ss. 154, 166, 167 and 331** *See* REORGANISATION AND ADMINISTRATION OF STATES, UTS & OTHER AREAS — 'U.P. Reorganisation Act, 2000 (29 of 2000)', S. 91, (2011) 15 SCC 127: (2014) 2 SCC (Civ) 347

— **S. 331** *See* 'Jurisdiction', (2014) 11 SCC 273: (2014) 4 SCC (Civ) 85

[942] — S. 331(4) — Second appeal before competent authority "shall lie on any grounds specified in S. 100 CPC" — Held, S. 331(4) incorporated S. 100 CPC as it stood prior to its amendment on 1-2-1977 and as such three grounds of appeal provided under unamended S. 100(1) CPC would be treated as part of S. 331(4) and it would not be affected by subsequent substitution of new S. 100 CPC providing only one ground of appeal i.e. case involves

substantial question of law — *General Clauses Act, 1897, S. 8 — CPC, 1908, S. 100*

The respondents filed a suit before the Sub-Divisional Magistrate/Assistant Collector under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950, claiming their adverse possession to the land in question and their names having not been recorded as bhumidars in the revenue records, seeking a declaration to that effect. The suit having been dismissed, the respondents filed an appeal before the Additional Commissioner (Judicial) under Section 331 of the U.P. Act. The Additional Commissioner recorded the finding that the land in dispute belonged to the original Kashtkar (tillers) of the land, who were members of the Tharu tribe and on their land the respondents could not claim any bhumidar rights and that adverse possession of the respondents for the prescribed period could not be proved. Accordingly, the appeal was dismissed and the order of the SDM was confirmed. The respondents preferred second appeals before the Board of Revenue under Section 331(4) of the U.P. Act which were heard together and allowed. The State through the District Collector, preferred writ petitions which the High Court dismissed. It was inter alia submitted on behalf of the State before the Supreme Court that the Board of Revenue had failed to frame any substantial question of law as per Section 331(4) of the U.P. Act and under Section 100 CPC as amended and consequently the Board and the High Court committed a grave error in reversing the concurrent findings rendered by the SDM and the Additional Commissioner. The question that came up for consideration was: whether Section 331(4) carries with it the amended Section 100 CPC as well, consequently, making it obligatory for the Board of Revenue to frame substantial question of law? In other words, the question was: whether reference to Section 100 in Section 331(4) is by way of referential legislation or legislation by incorporation?

Allowing the appeals,

Held :

A subsequent legislation often makes a reference to earlier legislation so as to make the provisions of the earlier legislation applicable to matters covered by later legislation. Such a legislation may either be (*i*) a referential legislation which merely contains a reference to or the citation of the provisions of the earlier statute; or (*ii*) a legislation by incorporation whereunder the provisions of the earlier legislation to which reference is made are incorporated into the later legislation by reference. (Para 17)

Therefore, a distinction has to be drawn between a mere reference or citation of one statute into another and incorporation. In the case of mere reference of citation, a modification, repeal or re-enactment of the statute that is referred will also have effect for the statute in which it is referred; but in the latter case any change in the incorporated statute by way of amendment or repeal has no repercussion on the incorporating statute. (Para 19)

Section 331(4) of the U.P. Zamindari Abolition and Land Reforms Act has used the expression "on any of the grounds" specified in Section 100 CPC. Consequently, the then existing Section 100 (i.e. Section 100, as it existed in the 1908 Code unamended) was incorporated in Section 331(4) and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right of appeal to the Board of Revenue under Section 331(4) clearly intended to be limited to the grounds set out in the then existing Section 100, since those were the grounds which were before the legislature and to which the legislature could have applied its mind and it is reasonable to assume that it was with reference to those specific and known grounds that the legislature intended to limit the right of appeal. (Para 26)

The appeal before the Board of Revenue would, therefore, lie on a question of law. This legal aspect was not considered properly either by the Board of Revenue or by the High Court. Further, the Board of Revenue has not examined the provisions of the land record and Lekhpal diary number, date and P.A. 10. The Additional Commissioner had specifically noticed that P.A. 10 which had been filed pertaining to year 1976 did not bear any signature and the same was found to be doubtful, as to whether the original "Kashtkar" (tillers) of the land in dispute belonged to Tharu tribe, was also not properly examined. Further, the Board of Revenue also should have examined whether the land belonged to Tharu tribe and the plaintiff could claim the benefit of Section 210 of the U.P. Act. All these aspects are very vital for a proper and just adjudication of the dispute, which has not been done. In such circumstances the orders passed by the High Court as well as the Board of Revenue are set aside and the matter is remanded to the Board of Revenue for fresh consideration, in accordance with law. (Paras 27 and 28). *State of Uttarakhand* v. *Mohan Singh*, (2012) 13 SCC 281: (2014) 5 SCC (Civ) 633: AIR 2013 SC 38.

Bench Strength 2. Coram: *K.S.P. Radhakrishnan* and *Dipak Misra*, JJ. [Date of decision: 12-9-2012]

Mahindra and Mahindra Ltd. v. Union of India, (1979) 2 SCC 529, applied

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1. GENERALLY

See also (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

A conspectus of the provisions of the Cinematograph Act, 1952 and the Delhi Cinematograph Rules, 1953 (DCR, 1953) shows that the duty to ensure safety of those entering a cinema hall for watching the exhibition of a film, is cast upon the occupier of the hall. The use of words "*taking all necessary measures before a cinematograph exhibition is commenced to ensure safety of the public and his employees against fire and other accidents*" leaves no manner of doubt that apart from the common law duty of care, the statutory provisions too cast such an obligation upon the licensee/occupier of the cinema hall. (Paras 99 to 103)

The question is whether and if so what is the effect of a statutory obligation to care for the safety of the visitors to a cinema hall, where a duty of care otherwise exists under the common law. Where a duty of care exists under the common law, and this duty is additionally supported and clarified by the statutory provisions, a breach of the statutory duty would be proof enough of negligence. It would not be open to the defendant in such a case to argue that the harm was not foreseeable, since *the very object of the legislation is to put that particular precaution beyond controversy*. Breach of a statutory duty constitutes negligence per se, but it applies only to legislation which is designed to prevent a particular mischief in respect of which the defendant is already under a duty in common law. Failure to meet the prescribed statutory standard is then treated as unreasonable conduct amounting to negligence, because a reasonable man would not ignore precautions required by statute, and the defendant cannot claim that the harm was unforeseeable because the legislature has already anticipated it. The statutory standard crystallises the question of what constitutes carelessness. On the other hand, where legislation does not deal with circumstances in which there is an existing common law duty, then, unless expressly stated, breach of the statute would not give rise to an action, because the damages may greatly exceed the penalty considered appropriate by the legislature. (Paras 104 and 105)

Reverting back to the degree and nature of care expected of an occupier of a cinema hall, at the outset, the nature and degree of care is expected to be such as would ensure the safety of the visitors against all foreseeable dangers and harm. That is the essence of the duty which an occupier owes to the invitees whether contractual or otherwise. The nature of care that the occupier must, therefore, take would depend upon the fact situation in which duty of care arises. For instance, in the case of a hotel which offers to its clients the facility of a swimming pool, the nature of the care that the occupier of the hotel would be expected to take would be different from what is expected of an occupier of a cinema hall. In the former case, the occupier may be expected to ensure that the pool is safe for use by the guests in the hotel, in that the depth is safe for those using the diving board if any, that life guards are on duty when children or other guests are using the pool, that immediate medical succour is provided to those who may meet with any accident, and so on. The nature of duty is in that sense different from that of cinema owner/occupier, where all these may not form part of his duty of care. (Para 106)

In the case of a cinema hall the nature of an occupier's duty of care may, inter alia, require him to ensure rapid dispersal from the hall in the event of any fire or other emergency, and for that purpose to provide suitable gangways and keep them clear of any obstruction, to provide proper exits, to keep the exit signs illuminated, to provide emergency lighting, to provide fire fighting systems, alarm systems and to employ and keep trained personnel on duty whenever an exhibition of cinematograph is in progress. An occupier of a cinema would be expected to take all those steps which are a part of his duty of care for the safety and security of all those visiting the cinema for watching a cinematograph exhibition. What is important is that the duty of care is not a one-time affair. It is a continuing obligation which the occupier owes towards every invitee, contractual or otherwise every time an exhibition of the cinematograph takes place. What is equally important is that not only under the common law but even under the statutory regimen, the obligation to ensure safety of the invitees is undeniable, and any neglect of the duty is actionable both as a civil and criminal wrong, depending upon whether the negligence is simple or gross. All these duties were grossly breached by the appellant-accused persons in the present case making them liable for criminal negligence under Section 304-A IPC. (Paras 106 and 107)

In the present case, the courts below have concurrently found that the occupiers of the cinema building being the appellant Ansal brothers A-1 and A-2 had committed several gross deviations from the sanctioned building plan apart from breaches of statutory provisions. These deviations and breaches which trapped the patrons in the balcony (as set out in paras 119.1 to 119.10) were the causa causans of the death of the victims in the instant case as the occupiers A-1 and A-2 had grossly neglected their duty of care as occupiers of the Cinema. (Para 119)

However, there were certain breaches of fire safety and other norms (as set out in paras 117.1 to

117.11) which were not the causa causans of the death of the victims. But two inferences are clearly available from even the breaches of these fire safety and other norms committed by the occupiers of the Cinema, A-1 and A-2, namely:

(*i*) That the occupiers of the cinema building were not sensitive towards the demands of safety of the patrons and amply showed that the safety of the visitors to the theatre was a matter of low priority for the occupiers; and

(*ii*) That the deviations raised the level of risk to the safety of the patrons which in turn required the occupiers to proportionately raise the level of their vigil and the degree of care in regard to the safety of those visiting the cinema. Instead of removing the deviations and the perceived fire hazards and thereby reducing the risk of exposing the patrons to avoidable dangers to their safety, the occupiers committed several breaches that directly contributed to the loss of valuable human lives. (i.e. the breaches of safety, building and other norms which trapped the patrons in the balcony as set out in paras 119.1 to 119.10) (Paras 117 and 118)

The argument that the incident in question was not reasonably foreseeable must in the light of the gross conscious violations of safety norms by the occupiers A-1 and A-2 indulged in only to increase the seating capacity and parking capacity of the Cinema, so as to make more money, must be rejected. So also, the argument that since no untoward incident had occurred for many years prior to the occurrence that claimed so many lives, the same indicated that the occurrence was not reasonably foreseeable deserves to be mentioned only to be rejected. (Paras 120 and 121)

The negligence of the Ansal brothers A-1 and A-2, the occupiers of the Cinema, was so gross so as to be culpable under Section 304-A IPC. The reasons are not far to seek. In the first place the degree of care expected from an occupier of a place which is frequented everyday by hundreds, if not thousands is very high in comparison to any other place that is less frequented or more sparingly used for public functions. The higher the number of visitors to a place and the greater the frequency of such visits, the higher would be the degree of care required to be observed for their safety. The duty is continuing which starts with every exhibition of cinematograph and continues till the patrons safely exit from the cinema complex. That the patrons are admitted to the cinema for a price, makes them contractual invitees or visitors qua whom the duty of care is even otherwise higher than others. The need for high degree of care for the safety of the visitors to such public places offering entertainment is evident from the fact that Parliament has enacted the Cinematograph Act and the Rules, which cast specific obligations upon the owners/occupiers/licensees with a view to ensuring the safety of those frequenting such places. The annual inspections and the requirements of no-objection certificates to be obtained from the authorities concerned is yet another indicator of how important the law considers the safety of the patrons to be. Any question as to the nature and the extent of breach must therefore be seen in the backdrop of the above duties and obligations that arise both under the common law and the statutory provisions alike. (Para 122)

Judged in the above backdrop it is evident that the occupiers in the present case A-1 and A-2 had shown scant regard both for the letter of law as also their duty under the common law to care for the safety of their patrons. The occupiers not only committed deviations from the sanctioned building plan that heightened the dangers to the safety of the visitors but continued to operate the Cinema in contemptuous disregard for the requirements of law in the process exposing the patrons to a high degree of risk to their lives which some of them eventually lost in the incident in question. Far from taking any additional care towards safety of the visitors to the cinema the occupiers asked for permission to place additional seats that further compromised the safety requirements and raised the level of risks to the patrons. The history of litigation between the occupiers on the one hand and the Government on the other regarding the removal of the additional seats permitted during national emergency and their opposition to the concerns expressed by the authorities on account of increased fire hazards as also their insistence that the addition or continuance of the seats would not affect the safety requirements of the patrons clearly showed that they were more concerned with making a little more money out of the few additional seats that were added to the cinema in the balcony rather than maintaining the required standards of safety in discharge of the common law duty but also under the provisions of the DCR, 1953. (Para 122). *Sushil Ansal* v. *State*, (2014) 6 SCC 173: (2014) 2 SCC (Cri) 717: (2014) 3 SCC (Civ) 343.

Bench Strength **2**. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

Winfield & Jolowicz on Tort (16th Edn.), referred to

— **Contributory negligence** *See* CARRIAGE OF GOODS AND CARRIERS — 'Carriage of Goods by Sea Act, 1925', Ss. 2 & 3 and Sch. Art. III R. 3, (2011) 15 SCC 56: (2014) 2 SCC (Civ) 225

See also MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 166, (2014) 13 SCC 254: (2014) 5 SCC (Civ) 703

Bench Strength 2. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

Raj Kapoor v. Laxman, (1980) 2 SCC 175: 1980 SCC (Cri) 383, distinguished on facts

Russel on Crime; Ratanlal and Dhirajlal Law of Crimes (23rd Edn.), p. 199, relied on

Green v. Fibreglass Ltd., (1958) 2 QB 245: (1958) 3 WLR 71: (1958) 2 All ER 521; Gee v. Metropolitan Railway Co., (1873) LR 8 QB 161; Grant v. Sun Shipping Co. Ltd., 1948 AC 549: (1948) 2 All ER 238 (HL); Haseldine v. Daw and Son Ltd., (1941) 2 KB 343: (1941) 3 All ER 156 (CA), distinguished

— Occupier's liability — Joint and several liability when many persons grossly breached duties of care to victims concerned *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Occupier's liability — Liability directly as "occupiers" distinguished from vicarious liability as officers of company which was the owner/occupier — Distinguished *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Occupier's liability — Non-derogable nature of *See* 'Negligence', (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— Occupier's liability — "Occupier" — Who is *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

[950] — Occupier's liability — Standard of care — Degree and nature of, expected from occupier — Concurrent/Additional contractual or statutory duties of care — Effect of — Degree of care expected in respect of public places which have large number of visitors, such as cinemas, malls and other such places — Principles laid down in detail — *Degree of care expected from occupier, held, depends upon the fact situation in which the duty of care arises, and upon whether the person to whom the duty is owed is a contractual visitor, invitee, licensee or trespasser — To the common law duty of care, at times is added a statutory duty which adds another dimension to the duty of care against injury to life and limb of innocent parties who are working in the premises or who visit such premises — At common law there is an implied term in the contract between the occupier and visitor that the occupier's premises shall be reasonably safe — Penal Code, 1860, S. 304-A — Easements Act, 1882, S. 58. Sushil Ansal* v. *State*, (2014) 6 SCC 173: (2014) 2 SCC (Cri) 717: (2014) 3 SCC (Civ) 343.

Bench Strength 2. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

Winfield & Jolowicz on Tort (16th Edn.); Black's Law Dictionary (5th Edn.); Advance Law Lexicon, referred to

Emperor v. Omkar Rampratap, (1902) 4 Bom LR 679, held, approved

Sushil Ansal v. State of Delhi, Criminal Appeal No. 794 of 2007, decided on 19-12-2008 (Del), partly affirmed

Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra, AIR 1965 SC 1616: (1965) 2 Cri LJ 550: (1965) 2 SCR 622, distinguished on facts

[951] — Occupier's liability — Whether derogable or delegable — Cinema — Safety in — Licence for cinematograph exhibition — Occupiers whether entitled to assume that Licensing Authority had duly discharged its duty and satisfied itself about the premises being adequately safe — Independent obligation upon occupier of premises to maintain compliance with safety norms, irrespective of assessment of the public authorities — *Held, R. 10(1) of the DCR, 1953 unambiguously casts responsibility for maintaining such compliance and safety upon the occupier — Principle that an occupier is entitled to assume that others have done their duty is applicable, provided that experience has not revealed to occupier that the negligence of others is common, nor did he at any time have reason to believe that his premises were unsafe — It is difficult for the occupiers in the present case to argue that they did not have reason to believe that the premises were unsafe, given the occurrence of a similar fire in 1989 (present incident occurring in 1997) and also as on a number of occasions defects in their premises had been pointed out to them — Cinematograph Act, 1952, Ss. 10, 12 and 14 — Delhi Cinematograph Rules, 1953, Rr. 10, 24, 37 and Sch. I — Evidence Act, 1872, S. 114 Ill. (e). Sushil Ansal* v. *State*, (2014) 6 SCC 173: (2014) 2 SCC (Cri) 717: (2014) 3 SCC (Civ) 343.

Bench Strength 2. Coram: **T.S. Thakur**[1] and **Gyan Sudha Misra**[2], JJ. [Date of decision: 5-3-2014]

Raj Kapoor v. Laxman, (1980) 2 SCC 175: 1980 SCC (Cri) 383, distinguished on facts

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Green v. Fibreglass Ltd., (1958) 2 QB 245: (1958) 3 WLR 71: (1958) 2 All ER 521; Gee v. Metropolitan Railway Co., (1873) LR 8 QB 161; Grant v. Sun Shipping Co. Ltd., 1948 AC 549: (1948) 2 All ER 238 (HL); Haseldine v. Daw and Son Ltd., (1941) 2 KB 343: (1941) 3 All ER 156 (CA), distinguished

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19. WORKMEN'S COMPENSATION ACT, 1923

[952] — Ss. 2(e) and 3 — Employer — Whether deceased employed as driver on a monthly salary of Rs 6000 by his own brother, owner of vehicle entitled to Rs 4,48,000 as compensation with interest @ 12% p.a. — *Held, Commissioner having appraised evidence and recorded finding of fact that deceased was indeed employed as driver by owner of vehicle, even if owner happened to be his brother, could not be lightly interfered with or reversed by High Court, overlooking fact that respondent owner of vehicle had appeared as a witness and clearly stated that deceased was his younger brother, but was working as a paid driver under him* (Para 10). *T.S. Shylaja* v. *Oriental Insurance Co.*, (2014) 2 SCC 587: (2014) 1 SCC (L&S) 359: (2014) 2 SCC (Civ) 156: AIR 2014 SC 893: (2014) 4 Mah LJ 42: (2014) 2 MPLJ 688: (2014) 2 KCCR 1689.

Bench Strength **2**. Coram: **T.S. Thakur** and *Vikramajit Sen*, JJ. [Date of decision: 3-1-2014]

United India Insurance Co. Ltd. v. Yallappa Bhimappa Alagudi, ILR 2006 KAR 518, impliedly approved

— **S. 3** *See also* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 147, 149, 166, 168 and 173, (2013) 12 SCC 84: (2014) 1 SCC (Civ) 286

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— **Ss. 3, 4 and Sch. I Pt. II & Sch. IV** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 168, (2013) 14 SCC 15: (2014) 2 SCC (Civ) 388

— **S. 4** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', S. 166, (2014) 2 SCC 735: (2014) 2 SCC (Civ) 192

— Ss. 166, 168 and 173, (2013) 12 SCC 455

[953] — Ss. 4-A and 3 — Payment of interest — Date from which to be reckoned — From date of accident — *Deceased driver 36 yrs of age driving a truck awarded compensation on account of death in sum of Rs 2,13,570 with 12% interest as also Rs 1,06,785 as penalty — Applying* Siby George, *(2012) 12 SCC 540, held, High Court erred in directing respondent Insurance Company to pay interest from date of adjudication of claim application and not from date of accident, wrongly relying upon per incuriam decision in* Satnam Singh, *(2011) 14 SCC 758 — Thus, held, appellants are entitled to 12% interest from date of accident* (Paras 8 to 10). *Saberabibi Yakubbhai Shaikh* v. *National Insurance Co. Ltd.*, (2014) 2 SCC 298: (2014) 1 SCC (Cri) 817: (2014) 2 SCC (Civ) 77: AIR 2014 SC 1393: (2014) 3 Mah LJ 252: (2014) 2 MPLJ 318: (2014) 117 Cut LT 943: (2014) 1 Cal LJ 100: (2014) 3 Guj LR 1932.

Bench Strength **2**. Coram: *S.S. Nijjar* and *F.M. Ibrahim Kalifulla*, JJ. [Date of decision: 2-1-2014]

Oriental Insurance Co. Ltd. v. Siby George, (2012) 12 SCC 540: (2012) 4 SCC (Cri) 136: (2013) 2 SCC (Civ) 392; Pratap Narain Singh Deo v. Srinivas Sabata, (1976) 1 SCC 289: 1976 SCC (L&S) 52; Kerala SEB v. Valsala K., (1999) 8 SCC 254: 2000 SCC (L&S) 50, applied

National Insurance Co. Ltd. v. Mubasir Ahmed, (2007) 2 SCC 349: (2007) 1 SCC (L&S) 643; Oriental Insurance Co. Ltd. v. Mohd. Nasir, (2009) 6 SCC 280: (2009) 2 SCC (Civ) 877: (2009) 2 SCC (Cri) 987; U.P. SRTC v. Satnam Singh, (2011) 14 SCC 758: (2012) 4 SCC (Civ) 1032: (2013) 2 SCC (L&S) 641, held, per incuriam

National Insurance Co. Ltd. v. Yusuf Ibrahim Shaikh, First Appeal No. 197 of 2012, decided on 24-1-2012 (Guj), reversed

[954] — Ss. 30(1)(a) to (e) and S. 30(1) first proviso — Appeal to High Court — Maintainability and Proper Mode of Disposal — Held, no appeal is maintainable against any order passed by Commissioner unless a substantial question of law is involved or the findings of fact are perverse — *High Court must in ordinary course formulate such a question or at least address the same in its judgment, especially when High Court takes a view contrary to that of Commissioner — In present case, High Court has neither referred to nor determined any question of law much less a substantial question of law — Furthermore, without indicating what documentary evidence Commissioner failed to appreciate and contradiction, if any, between such documents and oral version given by witnesses examined before Commissioner, High Court could not have upset finding of fact which Commissioner was entitled to record, without adverting to documents vaguely referred to — Thus order of Commissioner is restored* (Paras 9 to 12). *T.S. Shylaja* v. *Oriental Insurance Co.*,

(2014) 2 SCC 587: (2014) 1 SCC (L&S) 359: (2014) 2 SCC (Civ) 156: AIR 2014 SC 893: (2014) 4 Mah LJ 42: (2014) 2 MPLJ 688: (2014) 2 KCCR 1689.

Bench Strength 2. Coram: **T.S. Thakur** and *Vikramajit Sen*, JJ. [Date of decision: 3-1-2014]

Oriental Insurance Co. Ltd. v. T.S. Shylaja, MFA No. 738 of 2009, decided on 25-3-2011 (KAR), reversed

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TRUSTS AND TRUSTEES

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1. BOMBAY PUBLIC TRUSTS ACT, 1950 (29 OF 1950)

[955] — Generally — Not in conflict but in consonance with Societies Registration Act, 1860 — *Constitution of India, Art. 254* (Para 19.3). *Vinodkumar M. Malavia* v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength 2. Coram: *S.S. Nijjar* and **P.C. Ghose**, JJ. [Date of decision: 30-9-2013]

[956] — Ss. 2(10), 47(2), 47(3)(c) & (d) — Appointment of trustees of public temple (Trambakeshwar Shiva Temple) — "Persons having interest" — Interest of public is paramount — Traditional role played by persons belonging to a particular section viz. Tungars, Purohits and Pujaris in Temple for hundreds of years — Held, they have interest in the Trust — *Their interest would not be in conflict with Trust only because Tungars have interest in cash offerings, Purohits have interest in consideration for pujas performed by them for devotees and Pujaris have interest in performance of official pujas — Hence Tungars, Purohits and Pujaris need to be represented in the Trust*

The interest of the public is paramount in any religious public trust. The High Court has not only kept in mind the interest of the public but also interest of the Temple and has taken a view that the appointment of representatives of the Tungars, Purohits or Pujaris in the Trust would not be in

conflict with the interest of the Trust only because they have interest in the cash offerings, the consideration for the pujas or performance of the official puja in the Temple. The High Court has rightly held that Tungars, Purohits and Pujaris have interest in the Trust and not necessarily an interest which is in conflict with the interest of the Trust. In most of the decisions of the Board of Trustees, there would not be a conflict of interest between that of the Trust and that of the Tungars, Purohits and Pujaris. Rather, representation of Tungars, Purohits and Pujaris in the Board of Trustees may be necessary to ensure the smooth functioning of the Temple. Therefore, the High Court rightly held that Tungars, Purohits and Pujaris need to be represented in the Board of Trustees by one member from each of these classes. (Paras 14 and 13)

To ensure that the interest of the public is protected and safeguarded in all the decisions of the Board of Trustees, instead of two persons, four persons will be appointed by the Charity Commissioner from amongst male/female, adult Hindu devotees preferably residents of Trimbakeshwar, who will represent the public in the Board of Trustees. This will ensure that in a composition of maximum of nine members, four members at least will represent the public or the devotees of the Temple and the decisions of the Board of Trustees will be in the larger interest of the Temple and the public or the devotees. (Para 15). *Trambakeshwar Devasthan Trust* v. *Purohit Sangh*, (2011) 15 SCC 323: (2014) 2 SCC (Civ) 466: AIR 2012 SC 139: (2012) 109 AIC 159.

Bench Strength **2**. Coram: *R.V. Raveendran* and **A.K. Patnaik**, JJ. [Date of decision: 13-10-2011]

Fakir Mohamed Abdul Razak v. Charity Commr., AIR 1976 Bom 304, approved

Purohit Sangh v. Prabhakar Ramchandra Gokhale, 2004 Supp Bom CR 292, affirmed

[957] — S. 22 — Scope of inquiry of Charity Commissioner under, stated (Para 28). *Vinodkumar M. Malavia* v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength **2**. Coram: *S.S. Nijjar* and **P.C. Ghose**, JJ. [Date of decision: 30-9-2013]

Church of North India v. Lavajibhai Ratanjibhai, (2005) 10 SCC 760, followed

— Ss. 22, 36, 50-A, 51, 50 and 72 *See* 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

[958] — S. 72 — Admissibility of evidence — Evidence submitted before Charity Commissioner admissible unless same is against basic principles of Evidence Act — Charity Commissioner not required to strictly adhere to procedure under CPC, 1908 (Para 28). *Vinodkumar M. Malavia* v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength **2**. Coram: *S.S. Nijjar* and **P.C. Ghose**, JJ. [Date of decision: 30-9-2013]

[959] — S. 72(1) — Exercise of jurisdiction by civil court under — Can be justified if property in question is not trust property — *Challenge to unification of several churches including First District Church of Brethren (FDCB) into a single entity Church of North India (CNI) — Application under S. 72 filed before civil court assailing legality of order of Charity Commissioner holding change reports relating to unification and transfer of properties of FDCB to subsequently formed CNI Trust as valid thereon — Held, civil court correctly exercised jurisdiction — Trusts Act, 1882, Ss. 34 and 74* (Para 27). *Vinodkumar M. Malavia* v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength **2**. Coram: *S.S. Nijjar* and **P.C. Ghose**, JJ. [Date of decision: 30-9-2013]

2. OFFICIAL TRUSTEES ACT, 1913

— S. 7 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

3. RAJASTHAN PUBLIC TRUSTS ACT, 1959 (42 OF 1959)

See also CONSTITUTION OF INDIA — 'Article 226' — Scope of Judicial review/Interference under Art. 226 — Public Interest Litigation — Particular instances, Arts. 226, 136 and 32, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199

[960] — Object and scope — Mechanism for management of a public trust — It is a self-contained Act — Scheme of Act, discussed in detail (Paras 24 to 37). *Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana**, JJ. [Date of decision: 17-4-2014]

[961] — S. 24 (w.e.f. 1-7-1962) — Powers and jurisdiction of Assistant Commissioner under — Scope of, explained in detail — Matters regarding management of temples and properties and mode of succession of Galta Peeth/Thikana (a public trust) pending disposal and adjudication before Assistant Commissioner — PIL also filed — Maintainability — *Held, provisions of the 1959 Act clearly*

demonstrate powers and jurisdiction of Assistant Commissioner in deciding issues pertaining to public trust and particularly the issues raised both in matters pending before Assistant Commissioner and in PIL — Further, appellant having availed the alternative remedy available under the 1959 Act, cannot be permitted to avail two remedies simultaneously — Such conduct is an abuse of process of court — Mere availability of alternative remedy, although cannot be a ground to reject relief in a PIL, but in the facts and circumstances of the case, adjudication of such disputes is not warranted in a PIL — Remedy is to get such disputes adjudicated by a fact-finding authority as provided for under the 1959 Act — High Court's order relegating parties to the Assistant Commissioner before whom the applications were pending adjudication, upheld — Constitution of India, Arts. 226 and 136. Jaipur Shahar Hindu Vikas Samiti v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana, JJ.** [Date of decision: 17-4-2014]

Ram Saran Das v. State of Rajasthan, WP (C) No. 5111 of 2004, decided on 4-5-2010 (Raj), affirmed

[962] — S. 53 (w.e.f. 1-7-1962) — Scope — Appointment of Committee of Management in respect of a public trust — Directions to State Government sought, to protect interests of the trust — *Held, appointment of the Committee depends upon the satisfaction and necessity felt by the Government — Under amended S. 53 (amended on 12-10-2007), word "may" has been substituted in place of "shall", hence Government is given discretion to appoint or not to appoint the Committee — Furthermore, Assistant Commissioner has already passed an order and the same is subject-matter of appeal before the Commissioner — Hence, contention that a permanent Committee has to be appointed to look after the management of Galta Peeth, rejected — Court cannot give any direction to the Government to invoke S. 53 for appointment of a Committee of Management of the Trust. Jaipur Shahar Hindu Vikas Samiti* v. *State of Rajasthan*, (2014) 5 SCC 530: (2014) 3 SCC (Civ) 199.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and *Ranjan Gogoi* and **N.V. Ramana, JJ.** [Date of decision: 17-4-2014]

Ramodaracharya v. State of Rajasthan, WP (C) No. 6607 of 2004, decided on 4-5-2010 (Raj) sub nom Ram Saran Das v. State of Rajasthan, WP (C) No. 5111 of 2004, affirmed

Shehla Burney v. Syed Ali Moosa Raza, (2011) 6 SCC 529: (2011) 3 SCC (Civ) 425, explained and distinguished on facts

4. RELIGIOUS AND CHARITABLE ENDOWMENTS AND TRUSTS

(a) Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987)

[963] — S. 80 — Sale of temple land — Prior sanction of Commissioner — Relevant factors for consideration — *Capital value of the land or income that would be generated upon sale of the land — Prospect of increase in income of deity as a result of sale, held, more weighty in favour of sale than prospect of appreciation of value of land; this is especially true because of depreciation of money which might nullify any notional appreciation of value of the land — Hence, order of Single Judge of High Court and sale of land concerned to appellant, restored — Trusts Act, 1882, Ss. 15 and 16. A.P. Non-Gazetted Officers Assn.* v. *State of A.P.*, (2014) 6 SCC 419: (2014) 3 SCC (Civ) 581: AIR 2014 SC 2374.

Bench Strength **2**. Coram: *Dr B.S. Chauhan* and **Jasti Chelameswar, JJ.** [Date of decision: 3-4-2014]

K. Balayya v. Deptt. of Revenue, WP No. 2563 of 2002, order dated 3-3-2004 (AP), affirmed

G. Raghava Reddy v. State of A.P., (2006) 2 ALD 376: (2006) 2 ALT 440, reversed

(b) Churches

[964] — Unification/amalgamation of church societies — Divesting of properties — Proper mode for — *Unification of public religious society viz. First District Church of Brethren (FDCB) registered under Societies Registration Act (SR Act) and later registered as a public trust along with five other churches, into single entity viz. Church of North India (CNI) took place on basis of resolutions and deliberations — Formation of CNI vitiated by several legal lapses — Change reports filed to give effect to unification — CNI Trust founded under Companies Act, 1956 — Properties of FDCB which vested in a public religious trust governed by Bombay Public Trusts Act (BPT Act), held, cannot be divested to CNI merely on basis of unification effected pursuant to deliberation and resolutions without following provisions regarding dissolution of society, merger, etc. laid down under SR Act and BPT Act — When unification had no legal foundation, same cannot be justified on ground of Arts. 25 and 26 of the Constitution — Mere fact that some persons had earlier participated in unification process, would not estop them from challenging unification and automatic transfer of properties of FDCB to CNI as Arts. 25 and 26 of the Constitution protect their rights of changing faith and religion after reconsidering the matter —*

Societies Registration Act, 1860, Ss. 13 and 5 — Bombay Public Trusts Act, 1950 (29 of 1950), Ss. 22, 36, 50-A, 51, 50 and 72 — Constitution of India, Arts. 25 and 26 — Evidence Act, 1872, S. 115 — Trusts Act, 1882, Ss. 13 to 15, 23, 34, 36, 38, 39, 51 to 53 and 58 — Transfer of Property Act, 1882, S. 7. Vinodkumar M. Malavia v. *Maganlal Mangaldas Gameti*, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282.

Bench Strength 2. Coram: *S.S. Nijjar* and **P.C. Ghose**, JJ. [Date of decision: 30-9-2013]

Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, followed

Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388, distinguished on facts

Shirish Christian v. Maganlal Mangaldas Gameti, First Appeal No. 1535 of 2009, decided on 23-4-2012 (Guj), affirmed

(c) Dargah Khwaja Saheb Act, 1955

— Ss. 11 and 20 *See* CONSTITUTION OF INDIA, Arts. 26 and 136, (2014) 11 SCC 465: (2014) 4 SCC (Civ) 142

(d) T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959)

[965] — Ss. 44, 45 and 107 — Right guaranteed under Art. 26 of the Constitution embodied in S. 107 for observance — State authorities functioning under Act cannot pass orders so as to divest right of religious denomination to administer property — *Constitution of India, Art. 26(d) and Pt. III. Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282; Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388; Pannalal Bansilal Pitti v. State of A.P., (1996) 2 SCC 498, followed

[966] — Ss. 45 and 116 — Matters which may be prescribed — "Prescribed" — Means prescribed by rules — Executive Officer cannot be appointed in absence of any rules prescribing conditions subject to which appointment can be made — *Order of appointment must disclose reasons for and circumstances under which appointment of Executive Officer was necessitated — Further, order without stating period of its operation would be arbitrary and unsustainable — Words and Phrases — "Prescribed". Subramanian Swamy* v. *State of T.N.*, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134: AIR 2015 SC 460: (2014) 1 CTC 763: (2014) 2 LW 401.

Bench Strength 2. Coram: **Dr B.S. Chauhan** and *S.A. Bobde*, JJ. [Date of decision: 6-1-2014]

M.E. Subramani v. Commr., HR & CE (Admn.), AIR 1976 Mad 264, overruled

Sri Sabanayagar Temple v. State of T.N., (2009) 4 LW 705: (2009) 8 MLJ 1503; Sri Sabanayagar Temple v. State of T.N., (2009) 1 LW 826: (2009) 2 MLJ 600, reversed

5. TRUSTS ACT, 1882

— Ss. 13 to 15, 23, 34, 36, 38, 39, 51 to 53 and 58 *See* 'Religious and Charitable Endowments and Trusts' — Churches, (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— Ss. 15 and 16 *See* 'Religious and Charitable Endowments and Trusts' — Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (30 of 1987), S. 80, (2014) 6 SCC 419: (2014) 3 SCC (Civ) 581

— Ss. 34 and 74 *See* 'Bombay Public Trusts Act, 1950 (29 of 1950)', S. 72(1), (2013) 15 SCC 394: (2014) 5 SCC (Civ) 282

— Ss. 37, 38, 39, 15 and 36 *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 11, 16(c) and 20, (2011) 15 SCC 692: (2014) 2 SCC (Civ) 747

— S. 88 *See* EQUITY, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— Ss. 90 and 88 *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13, (2014) 5 SCC 651: (2014) 3 SCC (Civ) 295

— Security Interest (Enforcement) Rules, 2002, R. 8(3), (2014) 5 SCC 610

— Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— Ss. 90 and 88 — Sale or other transfer of secured asset by secured creditor/mortgage — Acts as a trustee *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 13 and 2(zf) & (zc), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— S. 91 — Contract for sale — When compulsorily registerable *See* CONTRACT AND SPECIFIC RELIEF — 'Contractual Obligations and Rights' — Accrual of Contractual Obligation, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 91 and 95 — Plaintiff always ready and willing to perform his part of contract — Hence decree of specific performance granted by trial court and first appellate court to transferee under prior contract for sale (CFS) (appellant plaintiff) against subsequent transferee with notice of the prior CFS, confirmed *See* CIVIL PROCEDURE CODE, 1908, S. 100, (2011) 15 SCC 247: (2014) 2 SCC (Civ) 370

— Ss. 91, 95 and 3 *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 54, 53-A, S. 3 Expln. II, Ss. 48 and 40 Para 2, (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— **Ss. 91, 95 and 58** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 15 and 19(b), (2014) 12 SCC 190: (2014) 5 SCC (Civ) 80

— **Ss. 91, 95 and 96** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3, 40 Paras 2 & 3 and S. 54, (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— **Ss. 91, 95, 96 and 58** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 40 Paras 2 & 3 & 53-A and Ss. 9 to 12, 54, 58(a) & (f), 59, 107, 118 & 123, (2014) 1 SCC 635: (2014) 1 SCC (Civ) 513

— **Ss. 91, 95, 96, 63 and 64** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice" and Expln. I, 38, 39, 40, 41, 43, 52 and 54, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **Ss. 91, 96 and 64** *See* CONTRACT AND SPECIFIC RELIEF — 'Particular Statutes' — Specific Relief Act, 1963, Ss. 19(b) and 16(c), (2013) 15 SCC 27: (2014) 4 SCC (Civ) 365

U.P. CONSOLIDATION OF HOLDINGS ACT, 1953 (5 OF 1954)

See TENANCY AND LAND LAWS

U.P. EXCISE (SETTLEMENT OF LICENCES FOR RETAIL SALE OF COUNTRY LIQUOR) RULES, 2002

See ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Liquor'

U.P. INDUSTRIAL AREA DEVELOPMENT ACT, 1976 (6 OF 1976)

See LOCAL GOVERNMENT — 'Town Planning'

U.P. KSHETTRA PANCHAYATS AND ZILA PANCHAYATS ACT, 1961 (33 OF 1961)

See LOCAL GOVERNMENT — 'Panchayats and Zila Parishads'

U.P. NAGAR MAHAPALIKA ADHINIYAM, 1959 (2 OF 1959)

See LOCAL GOVERNMENT — 'Municipalities'

U.P. PANCHAYAT RAJ ACT, 1947 (26 OF 1947)

See LOCAL GOVERNMENT — 'Panchayats and Zila Parishads'

U.P. REORGANISATION ACT, 2000 (29 OF 2000)

See REORGANISATION AND ADMINISTRATION OF STATES, UTS & OTHER AREAS

U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) ACT, 1972 (13 OF 1972)

See RENT CONTROL AND EVICTION

U.P. URBAN BUILDINGS (REGULATION OF LETTING, RENT AND EVICTION) RULES, 1972

See RENT CONTROL AND EVICTION

U.P. URBAN PLANNING AND DEVELOPMENT ACT, 1973 (11 OF 1973)

See LOCAL GOVERNMENT — 'Town Planning'

U.P. ZAMINDARI ABOLITION AND LAND REFORMS ACT, 1950 (1 OF 1951)

See TENANCY AND LAND LAWS

UK CIVIL PARTNERSHIP ACT, 2004

See FAMILY AND PERSONAL LAWS

UK FAMILY LAW ACT, 1996

See FAMILY AND PERSONAL LAWS

ULTRA VIRES

See ADMINISTRATIVE LAW

ULTRA VIRES ACTS/ABUSE OF POWER/ MISUSE OF POWER/PUBLIC FUNDS

See CONSTITUTION OF INDIA — 'Article 14' — Arbitrariness and exercise of Discretionary power

UNAUTHORISED CONSTRUCTIONS/ILLEGAL/ DEVELOPMENT/ENCROACHMENT

See LOCAL GOVERNMENT — 'Town Planning'

UNCONSCIONABLE CONTRACTS

See GOVERNMENT CONTRACTS/TENDERS

UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

See HUMAN AND CIVIL RIGHTS

UNJUST ENRICHMENT

See RESTITUTION

URBAN LAND (CEILING AND REGULATION) ACT, 1976

See TENANCY AND LAND LAWS — 'Ceiling on Land'

URBAN LAND (CEILING AND REGULATION) REPEAL ACT, 1999

See TENANCY AND LAND LAWS — 'Ceiling on Land'

USURY PROHIBITION/RATE OF INTEREST/ENHANCEMENT/REDUCTION

See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

UT RES MAGIS VALEAT QUAM PEREAT

See DOCTRINES AND MAXIMS

VALIDITY/JUDICIAL REVIEW/ INTERFERENCE

See GOVERNMENT CONTRACTS/TENDERS

VALUATION

See COURT FEES — 'Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (7 of 1956)', S. 37 and S. 7 r/w Ss. 24, 26, 28, 29, 34, 35, 42 and 45, (2014) 5 SCC 603: (2014) 3 SCC (Civ) 246

VARIATION, RECTIFICATION AND NOVATION OF CONTRACT

See CONTRACT AND SPECIFIC RELIEF

VEXATIOUS PETITIONS/FRIVOLOUS
See CONSTITUTION OF INDIA — 'Article 32' — Maintainability

VICARIOUS LIABILITY
See TORT LAW

VOID AND VOIDABLE — DISTINCTION
See CONTRACT AND SPECIFIC RELIEF — 'Formation Defects — Void and Voidable Contracts'

VOID ORDER/NULL ORDER/NULLITY
See CIVIL SUIT

W.B. COOPERATIVE SOCIETIES ACT, 1983 (45 OF 1983)
See COOPERATIVE SOCIETIES — 'Particular State and Local Statutes, Rules, Regulations and Bye-Laws'

W.B. PREMISES TENANCY ACT, 1997 (37 OF 1997)
See RENT CONTROL AND EVICTION

WAIVER
See CONTRACT AND SPECIFIC RELIEF
See also DOCTRINES AND MAXIMS
See also ESTOPPEL, ACQUIESCENCE AND WAIVER

WEBSITE
See INFORMATION TECHNOLOGY, INTERNET, COMPUTER AND CYBER LAWS

WESTERN AUSTRALIA INTERPRETATION ACT, 1984
See FAMILY AND PERSONAL LAWS

WHAT IS BINDING — "LAW DECLARED BY SUPREME COURT"
See CONSTITUTION OF INDIA — 'Article 141'

WILL
See DEEDS AND DOCUMENTS — 'Particular Deeds, Documents and Clauses' — Property deeds and documents
See also FAMILY AND PERSONAL LAWS — 'Succession and Inheritance'

WITHDRAWAL OF PROCEEDINGS/ QUASHMENT/FRAMING OF FIR/CHARGES
See CONSTITUTION OF INDIA — 'Article 136' — Scope of Interference under Art. 136 — Criminal matters

WITHHELD AMOUNT/DELAYED PAYMENTS/ WRONGFULLY DETAINED AMOUNT
See DEBT, FINANCIAL AND MONETARY LAWS — 'Interest'

WITNESSES
See CIVIL SUIT
See also PRACTICE AND PROCEDURE

WORDS AND PHRASES
— "Act" and "omission" *See also* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

[967] — "Act" and "omission" — Held, "omission" does not mean a negative act — Calling it so, is a dangerous practice — *Penal Code, 1860, Ss. 32, 33 and 36*

A perusal of Section 338 IPC would clearly demonstrate that before a person is held guilty of the offence, the following ingredients need to be established:

(*a*) causing grievous hurt to a person;

(*b*) grievous hurt should be the result of an act or omission;

(*c*) such act or omission ought to have been rash and negligent;

(*d*) the intensity of commission of such an act or omission ought to endanger human life or the personal safety of others. (Para 21)

Section 338 IPC explicitly lays down that only that an "act" (which includes an omission) which is "*so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished...*". Thus Section 338 IPC itself carves out the standard of criminal negligence intended to distinguish between those whose failure is culpable and those whose conduct, although not up to the standard, is not deserving of punishment. (Para 48)

There may be various circumstances where "act" would include "omission to act" as well. This is so recognised even in Sections 32, 33 and 36 IPC. An omission is sometimes called a negative act, but this seems dangerous practice, for it too easily permits an omission to be substituted for an act without requiring the special requirement for omission liability such as legal duty and the physical capacity to perform the act. Criminal liability for an omission is also well accepted where the actor has a legal duty and the capacity to act. It is said that this rather fundamental exception to the act requirement is permitted because an actor's failure to perform a legal duty of which he is capable, satisfies the purposes of the act requirement or at least satisfies them as well as an act does. Specifically these two special requirements for omission liability help to exclude from liability cases of fantasising and irresolute intentions, important purposes of the act requirement. (Paras 28 and 29)

However, a failure to act, by itself does nothing to screen out mere fantasies. It is the actor's failure to act in the light of his capacity to do so that suggests the actor's willingness to go beyond mere fantasising and to have the harm or evil of the offence occur. Even then, however, the screening effect seems weak; "letting something happen" simply does not carry the same implication of resolute intention that is shown in causing something to

happen by affirmative action. While an actor's failure to perform a legal duty provides some evidentiary support for the existence of an intention to have the harm or evil occur, the force of the implication is similarly weak. Inaction often carries no implication of intention unless it is shown that the actor knows of his or her duty to act and the opportunity to do so. (Para 30)

Liability for an omission requires a legal duty to act; a moral duty to act is not sufficient. The duty may arise either from the offence definition itself or from some other provision of criminal or civil law. A duty arises from the former when an offence is defined in terms of omission. This is the situation where the legislature has made it an offence. A legal duty to act may also be created by a provision of either criminal or civil separate from the offence charged. For example, a duty under the Maharashtra Medical Council's Code of Ethics and the Maharashtra Medical Council Act, 1965. (Para 31)

Since there is no moral difference between (*i*) a positive act and (*ii*) an omission when a duty is established, it is to be borne in mind that in cases of omissions, the liability should be exceptional and needs to be adequately justified in each instance. Secondly, when it is imposed this should be done by clear statutory language. Verbs primarily denoting (and forbidding) active conduct should not be construed to include omissions except when the statute contains a genuine implication to this effect. Thirdly, maximum penalties applied to active wrongdoing should not automatically be transferred to corresponding omissions; penalties for omissions should be rethought in each case. Indeed, the Penal Code, 1860 does include explicitly the liability due to omissions. And even Indian courts have affirmed so. While dealing with the imposition of liability for omission, certain considerations are required to be kept in mind. Does Section 338 IPC recognise that the particular offence may be committed by omission? Some category of offences may, some may not; Does it include medical profession? If the offence is capable of being committed by omission, who all were under a duty to act? Who owed the primary duty? What are the criteria for selecting the culprit? Where the definition of the crime requires proof that the actor caused a certain result, and can he be said to have caused that result by doing nothing? These questions cannot be completely separated and sometimes few or all three of them would arise in the same material which follows. Each of them, perhaps, also gives rise to yet another question: is the actor's conduct properly categorised as an omission, or an act? Indeed Section 338 IPC does recognise unambiguously that the particular offence can be committed by omission. More so, the medical profession is included in it. The offence under Section 338 IPC is capable of being committed by omission. Therefore, it is held that the expression "act" occurring in Section 338 IPC, includes acts of omission as well. (Paras 32 and 33). *P.B. Desai* v. *State of Maharashtra*, (2013) 15 SCC 481: (2014) 6 SCC (Cri) 507: (2014) 5 SCC (Civ) 323: AIR 2014 SC 795: 2014 Cri LJ 385: (2013) 131 AIC 94: (2013) 4 CPJ 63.

Bench Strength 2. Coram: *A.K. Patnaik* and **A.K. Sikri**, JJ. [Date of decision: 13-9-2013]

Queen Empress v. Latifkhan, ILR (1896) 20 Bom 394, approved

— **"Action" and "cause of action"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

— **"Actions having a live link to the fact"** *See* "Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence", below

— **"Acts"** *See also* PRACTICE AND PROCEDURE — 'Power-of-Attorney', (2013) 12 SCC 64: (2014) 1 SCC (Civ) 23

— **"Acts perceived as a part of the occurrence"** *See* "Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence", below

— **"Adoption"** *See* CONSTITUTION OF INDIA — 'Article 14' — Classification Rule — Particular Bases for classification — Discriminatory and Prohibited bases, Arts. 14, 15 and 44, (2014) 4 SCC 1: (2014) 2 SCC (Civ) 417

— **"After"** *See* "Of", "from" and "after", below

— **"Amenities of life" and "loss of amenities of life"** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 168, (2013) 14 SCC 774: (2014) 3 SCC (Civ) 533

— **"Amusement"** *See* "Place of public amusement", "place of public entertainment", "entertainment" and "amusement", below

— **"Anti-suit injunction"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 2(2), 9, 20 and 45, (2014) 5 SCC 1: (2014) 3 SCC (Civ) 59

— **"Any person"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Ss. 17(1), 13 and 14, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also (2012) 13 SCC 269: (2014) 5 SCC (Civ) 621

— **"Any person" and "parties and witnesses"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', S. 27, (2014) 1 SCC 113: (2014) 1 SCC (Civ) 10

— **"Appeal"** *See* "Revision" and "Appeal", below

— **"Are so connected with a fact in issue"** *See* "Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence", below

— **"Arising out of the land"** *See* "Arising out of the plant and machinery", "arising out of the land" and "arising out of plant and machinery", below

— **"Arising out of the plant and machinery"** *See* "Arising out of the land", "arising out of the plant and machinery", "arising out of the land" and "arising out of plant and machinery", below

— **"As to"** *See* "Of/about", "as to", "statement *of/about* existence of fact" and "statement *as to* existence of fact", below

— **"Bad faith in relation to property"** *See* "Dishonest transfer, concealment or removal of property", "bad faith in relation to property", below

— **"Belong", "belonging", "own", "ownership" and "management"** *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 2(e) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— **"Belonging"** *See* "Belong", "belonging", "own", "ownership" and "management", above

— **"Bodies" or "persons" or "leases" includes "body" or "person" or "lease"** *See* TENANCY AND LAND LAWS — 'Bombay Tenancy and Agricultural Lands Act, 1948 (67 of 1948)', S. 43-A(1)(b), (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— **"Body"** *See* "Bodies" or "persons" or "leases" includes "body" or "person" or "lease", above

— **"Bona fide purchasers for value without notice"** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 3 "notice", 52, 54, 40, 41, 43, 38 and 39, (2013) 12 SCC 776: (2014) 1 SCC (Civ) 734

— **"Borrower"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, R. 8(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— **"Branded good"** *See* (2013) 12 SCC 468: (2014) 1 SCC (Civ) 701

— **"Causa causans", *"causa sine qua non"* and "causation"** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— ***"Causa sine qua non"*** *See* "Causa causans", "*causa sine qua non*" and "causation", above

— **"Causation"** *See* "Causa causans", "causa sine qua non" and "causation", above

— **"Cause of action"** *See* "Action" and "cause of action", above

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 & proviso and S. 142, (2014) 9 SCC 129: (2014) 4 SCC (Civ) 676

— **"Common areas and facilities"** *See* "Community and commercial facilities" and "common areas and facilities", below

See also PROPERTY LAW — 'Easements Act, 1882', Ss. 7, 13 and 55, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **"Community and commercial facilities" and "common areas and facilities" — Distinguished** *See* LOCAL GOVERNMENT — 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **"Compromise decree"** *See* "Consent decree" and "compromise decree", below

— **"Conclusion"** *See* "Findings", "conclusion", "decision" and "findings", below

— **"Consent decree" and "compromise decree"** *See* CIVIL PROCEDURE CODE, 1908, S. 96(3) and Or. 23 R. 3, (2013) 16 SCC 607: (2014) 5 SCC (Civ) 570

— **"Contemporaneously arising out of the occurrence"** *See* "Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence", below

— **"Contributory or composite" negligence — Distinction between — Reiterated** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 173, (2014) 3 SCC 590: (2014) 2 SCC (Civ) 303

— **"Cruelty" and "mental cruelty"** *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-a), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— **"Curial law"** *See* "Lex fori" and "curial law", below

— **"Debt or other liability"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 Expln., (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138

— **"Decision"** *See* "Findings", "conclusion", "decision" and "findings", below

— **"Declaration of law" — Meaning** *See* CONSTITUTION OF INDIA — 'Article 141' — What is binding — "Law declared by Supreme Court" — Generally, Arts. 141 and 136, (2014) 8 SCC 883: (2014) 4 SCC (Civ) 657

— **"Desertion"** *See* FAMILY AND PERSONAL LAWS — 'Hindu Law' — Hindu Marriage Act, 1955, S. 13(1)(i-b), (2014) 7 SCC 640: (2014) 3 SCC (Civ) 774

— **"Development works" and "Internal/external development works"** *See* HOUSING, CONSTRUCTION AND REAL ESTATE — 'Colonisation/New Colonies/Multistoreyed Buildings', (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **"Direct", "direct evidence", "primary", "primary evidence", "indirect", "indirect evidence" and "secondary evidence"** *See* EVIDENCE ACT, 1872, Ss. 60, 6 and 17 to 31, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

— **"Direct evidence"** *See* "Direct", "direct evidence", "primary", "primary evidence", "indirect", "indirect evidence" and "secondary evidence", above

— **"Dishonest transfer, concealment or removal of property", "bad faith in relation to property"** *See* CIVIL PROCEDURE CODE, 1908, S. 51 proviso (a)(ii), (2014) 8 SCC 470: (2014) 4 SCC (Civ) 424

— **"Domestic relationship"** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **"Domestic violence" — What is — "Economic abuse"** *See* (2014) 3 SCC 712: (2014) 2 SCC (Civ) 330

— **"Double exequatur"** *See* "Exequatur" and "Double exequatur", below

— **"Economic abuse"** *See* "Domestic violence" and "Economic abuse", above

[968] — "Endanger" — Held, means act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt concept of life as understood in its ordinary sense

Section 8(1)(*g*) of the RTI Act, 2005 is concerned with the cases where no obligation is cast upon the public authority to furnish information, the disclosure of which would endanger (*a*) the life, (*b*) physical safety of any person. The legislature, in its wisdom, has used two distinct expressions. They cannot be read or construed as being synonymous. Every expression used by the legislature must be given its intended meaning and, in fact, a purposeful interpretation. The expression "life" has to be construed liberally. "Physical safety" is a restricted term while "life" is a term of wide connotation. "Life" includes reputation of an individual as well as the right to live with freedom. The expression "life" also appears in Article 21 of the Constitution and has been provided a wide meaning so as to inter alia include within its ambit the right to live with dignity, right to shelter, right to basic needs and even the right to reputation. The expression "life" under Section 8(1)(*g*) of the RTI Act, thus, has to be understood in somewhat similar dimensions. The term "endanger" or "endangerment" means the act or an instance of putting someone or something in danger; exposure to peril or such situation which would hurt the concept of life as understood in its wider sense. of course, physical safety would mean the likelihood of assault to physical existence of a person. If in the opinion of the authority concerned there is danger to life or possibility of danger to physical safety, the State Information Commission would be entitled to bring such case within the exemption of Section 8(1)(*g*) of the RTI Act. The disclosure of information which would endanger the life or physical safety of any person is one category and identification of the source of information or assistance given in confidence for law enforcement or security purposes is another category. The expression "for law enforcement or security purposes" is to be read ejusdem generis only to the expression "assistance given in confidence" and not to any other clause of the section. On the plain reading of Section 8(1)(*g*), it becomes clear that the said clause is complete in itself. It cannot be said to have any reference to the expression "assistance given in confidence for law enforcement or security purposes". Neither the language of the section nor the object of the section requires such interpretation. (Para 27)

Now, the ancillary question that arises is as to the consequences that the interviewers or the members of the Interview Board would be exposed to in the event their names and addresses or individual marks given by them are directed to be disclosed. Firstly, the members of the Board are likely to be exposed to danger to their lives or physical safety. Secondly, it will hamper effective performance and discharge of their duties as examiners. This is the information available with the examining body in confidence with the interviewers. Hence, direction to furnish the names and addresses of the interviewers would certainly be opposed to the very spirit of Section 8(1)(*g*) of the RTI Act. (Para 28). *Bihar Public Service Commission* v. *Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131: (2013) 1 KLT 516: (2013) 116 Cut LT 78: (2013) 2 LW 293.

Bench Strength **2.** Coram: **Swatanter Kumar** and *S.J. Mukhopadhaya*, JJ. [Date of decision: 13-12-2012]

Black's Law Dictionary (8th Edn.), referred to

CBSE v. Aditya Bandopadhyay, (2011) 8 SCC 497, followed

— **"Entertainment"** *See* "Place of public amusement", "place of public entertainment", "entertainment" and "amusement", below

— **"Exequatur" and "Double exequatur"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 44, 46, 48 & 49 and Sch. I, (2013) 10 SCC 717: (2014) 1 SCC (Civ) 120

— **"Expropriation"** *See* CONSTITUTION OF INDIA, Art. 300-A, (2014) 5 SCC 199: (2014) 3 SCC (Civ) 161

— **"Fact in issue"** *See* "Relevant facts" and "facts in issue", below

See also "Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence", below

— **"Facts in issue" and "relevant facts"** *See* EVIDENCE ACT, 1872, Ss. 17 to 31 and 5 to 16, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

— Ss. 5 to 16, (2013) 12 SCC 17

— **"Fatwa"** *See* FAMILY AND PERSONAL LAWS — 'Muslim Law' — Fatwa/Dar-ul-Qazas/Nizam-e-Qazas, (2014) 7 SCC 707: (2014) 3 SCC (Civ) 798

— **"Fiduciary" and "Fiduciary relationship"** *See* EQUITY, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

See also HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(e), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **"Fiduciary relationship"** *See* "Fiduciary" and "Fiduciary relationship", above

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 126, 122 and 54, (2014) 4 SCC 196: (2014) 2 SCC (Civ) 504

— **"Findings"** *See also* "Conclusion", "decision" and "findings", below

— **"Findings", "conclusion", "decision" and "findings" in arbitration clause — Meaning — Interchangeable use of "finding", "conclusion" and "decision" by legal profession and courts — Significance of** *See* ARBITRATION — 'Arbitration Act, 1940', Ss. 16(1)(c), 30(c), 17 & 2(b), (2014) 9 SCC 212: (2014) 4 SCC (Civ) 777

— **"From"** *See* "Month", "six months" and "from", below

See also "Of", "from" and "after", below

— **"Fundamental policy of Indian law"** *See* "Public policy of India", "fundamental policy of Indian law", "judicial approach", below

— **"Gift"** *See* "Will", "gift" and "settlement", below

— **"Good faith"** *See* "Mistake of fact" and "good faith", below

— **"Grant of liberty"** *See* PRACTICE AND PROCEDURE — 'Directions to "consider"/"Grant of liberty"', (2013) 15 SCC 655: (2014) 5 SCC (Civ) 387

— **"Gratuitous licensee"** *See* "Licensee" and "gratuitous licensee", below

— **"Gross"** *See also* "Gross negligence" and "gross", below

— **"Gross negligence" and "gross"** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— **"Held"** *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES, (2014) 6 SCC 707: (2014) 3 SCC (Civ) 633

— **"Indirect"** *See* "Direct", "direct evidence", "primary", "primary evidence", "indirect", "indirect evidence" and "secondary evidence", above

— **"Indirect evidence"** *See* "Direct", "direct evidence", "primary", "primary evidence", "indirect", "indirect evidence" and "secondary evidence", above

— **"Information" and "right to information"** *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', Ss. 2(f), 2(j), 8 and 11, (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **"Inoperative or incapable of being performed", "null and void", "void" and "voidable"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 45 and 8, (2014) 11 SCC 639: (2014) 4 SCC (Civ) 226

— **"Insolvency"** *See* "Insolvent" and "insolvency", below

— **"Insolvent" and "insolvency"** *See* INSURANCE — 'Insurer's Liability/Insurance Policy', (2014) 5 SCC 771: (2014) 3 SCC (Civ) 339

— **"Internal/external development works"** *See* "Development works" and "Internal/external development works", above

— **"Judicial approach"** *See* "Public policy of India", "fundamental policy of Indian law", "judicial approach", below

— **"Just compensation"** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166 and 168, (2013) 16 SCC 719: (2014) 5 SCC (Civ) 612

— Ss. 166 to 168, 163-A and Sch. II, (2013) 15 SCC 45

— **"Justified by law"** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— **"Law"** *See* ADMINISTRATIVE LAW — 'Administrative Action' — Administrative or Executive Function — Administrative Orders/Decisions/Executive Instructions/Orders/Circulars, (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

— **"Law of India"** *See* "Public policy", "public policy of India" and "law of India", below

— **"Lawful possession"** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 105, 108(c), 109 & 111 and Ss. 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **"Lease"** *See also* "Bodies" or "persons" or "leases" includes "body" or "person" or "lease", above

— **"Lease" and "property"** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 105, 108(c), 109, 111, 58 and 7, 8 & 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

— **"Leases"** *See* "Bodies" or "persons" or "leases" includes "body" or "person" or "lease", above

— **"Legal fiction"** *See* "Presumption", "presumption of fact" and "legal fiction", below

— **"Legal representative"** *See* MOTOR VEHICLES — 'Motor Vehicles Act, 1988', Ss. 166, 168 and 173, (2014) 3 SCC 394: (2014) 2 SCC (Civ) 282

— **"Legality", "regularity" and "propriety" — Meaning of** *See* RENT CONTROL AND EVICTION — 'Revision', (2014) 9 SCC 78: (2014) 4 SCC (Civ) 723

— **"Legally wedded wife"** *See* "Wife" and "legally wedded wife", below

— **"Lex fori" and "curial law"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', (2014) 7 SCC 603: (2014) 3 SCC (Civ) 737

— **"Licensee"** *See also* "Licensor" and "Licensee", below

— **"Licensee" and "gratuitous licensee"** *See* COURTS, TRIBUNALS AND JUDICIARY — 'Courts, Tribunals and Special Courts' — Presidency Small Cause Courts Act, 1882, S. 41(1) (as amended by Maharashtra Act 19 of 1976), (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

— **"Licensor" and "Licensee"** *See* PROPERTY LAW — 'Easements Act, 1882', S. 52, (2013) 15 SCC 358: (2014) 5 SCC (Civ) 260

— **"Life" and "public safety"** *See* HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(g), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **"Live-in-relationship" and "Marriage"** *See* FAMILY AND PERSONAL LAWS — 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **"Loss of amenities of life"** *See* "Amenities of life" and "loss of amenities of life", above

— **"Management"** *See* "Belong", "belonging", "own", "ownership" and "management", above

— **"Market value of property"** *See* "Value of the property" and "market value of property", below

— **"Marriage"** *See* "Live-in-relationship" and "Marriage", above

See also FAMILY AND PERSONAL LAWS — 'Marriage', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **"Marriage" and "relationship in the nature of marriage"** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— Ss. 2(f), 2(a), 2(q) and 3, (2013) 15 SCC 755

— Ss. 2(f) and 3, (2013) 15 SCC 755

— S. 2(f) r/w S. 2(a), (2013) 15 SCC 755

See also FAMILY AND PERSONAL LAWS — 'Live-in Relationship/Presumed Marriage/Premarital Sex', (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **"May"** *See* (2014) 2 SCC 657: (2014) 2 SCC (Civ) 161

See also LOCAL GOVERNMENT — 'Town Planning' — Haryana Apartment Ownership Act, 1983 (10 of 1983), S. 3(f)(7) and Ss. 11 to 13, (2014) 12 SCC 231: (2014) 5 SCC (Civ) 94

— **"Means"** *See* (2013) 15 SCC 755: (2014) 5 SCC (Civ) 440

— **"Mental cruelty"** *See* "Cruelty" and "mental cruelty", above

— **"Mission/vision"** *See* "Responsible litigant" and "mission/vision", below

— **"Mistake of fact" and "good faith"** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

— **"Month", "six months" and "from"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Negotiable Instruments Act, 1881', S. 138 proviso (a), (2014) 11 SCC 759: (2014) 4 SCC (Civ) 274

— **"Negligence"** *See also* "Rash" and "negligence"/"negligent", below

— **"Negligence" and "recklessness" — Differentiated** *See* (2013) 15 SCC 481: (2014) 5 SCC (Civ) 323

— **"Negligent"** *See* "Rash" and "negligence"/"negligent", below

— **"Nostro" and "Vostro"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Banks' — Banking business — Banking transactions, (2014) 11 SCC 161: (2014) 4 SCC (Civ) 1

— **"Null and void"** *See* "Inoperative or incapable of being performed", "null and void", "void" and "voidable", above

— **"Occupier" — Who is — Test for** *See* (2014) 6 SCC 173: (2014) 3 SCC (Civ) 343

[969] — "Of", "from" and "after" — Meaning — Held, words "of", "from" and "after" may, in a given case, mean the same thing

The submission that the word "of" occurring in Sections 138(*c*) and 142(*b*) of the NI Act is to be interpreted differently as against the word "from" occurring in Section 38(*a*) of the NI Act, and thus, for the purposes of Section 142(*b*), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days, is rejected. The principle laid down in *Tarun Prasad Chatterjee*, (2000) 8 SCC 649 would have a bearing on the present case since in that case also the Limitation Act was not applicable. Referring to Section 9(1) of the General Clauses Act, 1897, the Supreme Court held that it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the words "from" and, for the purpose of including last in a series of days or any other period of time, to use the word "to". The Supreme Court observed that the said Section 9 gives statutory recognition to the well-established principle applicable to the construction of statute that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day. (Paras 27 to 29)

In *Tarun Prasad Chatterjee*, (2000) 8 SCC 649, it was observed that "in order to apply Section 9 of the GCA, 1897, the first condition to be fulfilled is whether a prescribed period is fixed "from" a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 requires the exclusion of the first day. The words "from" and "within" used in Section 81(1) of the RP Act, 1951 (in question in that case) do not express any contrary intention." Thus, it was concluded that a conjoint reading of Section 81(1) of the RP Act, 1951 and Section 9 of the General Clauses Act, 1897 leads to the conclusion that the first day of the period of limitation is required to be excluded for the convenience of the parties. As the Limitation Act is held to be not applicable to the NI Act, drawing parallel from *Tarun Prasad Chatterjee case* where the Limitation Act was held not applicable, with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. Thus, it is not possible to hold that the word "of" occurring in Sections 138(*c*) and 142(*b*) of the NI Act is to be interpreted differently as against the word "from" occurring in Section 138(*a*) of the NI Act; and that for the purposes of Section 142(*b*), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. The words "of", "from" and "after" may, in a given case, mean really the same thing. The word "of" is sometimes the equivalent of "after". (Paras 32 to 39)

Thus, it is held that *Saketh India Ltd.*, (1999) 3 SCC 1 lays down the correct proposition of law. For the purpose of calculating the period of one month, which is prescribed under Section 142(*b*) of the NI Act, the period has to be reckoned by excluding the

date on which the cause of action arose. Further, *SIL Import, USA*, (1999) 4 SCC 567 does not lay down the correct law. Needless to say that any decision of the Supreme Court which takes a view contrary to the view taken in *Saketh India Ltd. case* by the Supreme Court, which is confirmed now, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly. (Para 42). *Econ Antri Ltd.* v. *Rom Industries Ltd.*, (2014) 11 SCC 769: (2014) 3 SCC (Cri) 551: (2014) 4 SCC (Civ) 284: AIR 2013 SC 3283: 2013 Cri LJ 4195: (2013) 5 CTC 318: (2013) 3 KLT 972: (2013) 130 AIC 242.

Bench Strength **3**. Coram: *P. Sathasivam, C.J.* and **Ranjana P. Desai** and *Ranjan Gogoi*, JJ. [Date of decision: 26-8-2013]

Vasantlal Ranchhoddas Patel v. Union of India, AIR 1967 Bom 138, held, approved

Danial Latifi v. Union of India, (2001) 7 SCC 740: (2007) 3 SCC (Cri) 266; State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210: (2010) 4 SCC (Civ) 605, distinguished

Halsbury's Laws of England, 37th Edn., Vol. 3, p. 92, considered

Stroud's Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), referred to

Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1: 1999 SCC (Cri) 329, affirmed

SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567: 1999 SCC (Cri) 600, overruled

— **"Of/about", "as to", "statement *of/about* existence of fact" and "statement *as to* existence of fact"** *See* EVIDENCE ACT, 1872, Ss. 11, 60 and 6, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

— **"Omission"** *See* "Act" and "omission", above

— **"Or"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Security Interest (Enforcement) Rules, 2002, Rr. 8(6) and 9(1), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

— **"Otherwise"** *See* COURTS, TRIBUNALS AND JUDICIARY — 'Supreme Court, Federal Court and Privy Council' — Supreme Court Rules, 1966, Or. 4 R. 8-A, (2014) 1 SCC 572: (2014) 1 SCC (Civ) 483

— **"Own"** *See* "Belong", "belonging", "own", "ownership" and "management", above

— **"Ownership"** *See* "Belong", "belonging", "own", "ownership" and "management", above

— **"Paid"** *See* LAND ACQUISITION AND REQUISITION — 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013', Ss. 24(1) & (2), (2014) 3 SCC 183: (2014) 2 SCC (Civ) 274

— **"Parties and witnesses"** *See* "Any person" and "parties and witnesses", above

— **"Pass such other orders and give such directions to give effect to its orders or to prevent abuse of its process or to secure ends of justice"** *See* DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Ss. 17, 19(25), 20, 21 and 22, (2013) 15 SCC 341: (2014) 5 SCC (Civ) 243

— **"Permissive possession"** *See* PROPERTY LAW — 'Possession', (2014) 11 SCC 664: (2014) 4 SCC (Civ) 250

— **"Person"** *See* "Bodies" or "persons" or "leases" includes "body" or "person" or "lease", above

— **"Persons"** *See* "Bodies" or "persons" or "leases" includes "body" or "person" or "lease", above

— **"Perverse" findings** *See* TENANCY AND LAND LAWS — 'Revision', (2013) 15 SCC 193: (2014) 5 SCC (Civ) 196

— **"Place of public amusement", "place of public entertainment", "entertainment" and "amusement"** *See* ENTERTAINMENT, AMUSEMENT, LEISURE AND SPORTS — 'Entertainment and Leisure Establishments', (2013) 14 SCC 592: (2014) 3 SCC (Civ) 503

— **"Place of public entertainment"** *See* "Place of public amusement", "place of public entertainment", "entertainment" and "amusement", above

— **"Potentiality" — Meaning of** *See* LAND ACQUISITION AND REQUISITION — 'Land Acquisition Act, 1894', Ss. 23, 18 and 54, (2013) 14 SCC 406: (2014) 2 SCC (Civ) 763

— **"Prescribed"** *See* TRUSTS AND TRUSTEES — 'Religious and Charitable Endowments and Trusts' — T.N. Hindu Religious and Charitable Endowments Act, 1959 (22 of 1959), Ss. 45 and 116, (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— **"Presumption", "presumption of fact" and "legal fiction"** *See* EVIDENCE ACT, 1872, S. 112, (2014) 2 SCC 576: (2014) 2 SCC (Civ) 145

— **"Presumption of fact"** *See* "Presumption", "presumption of fact" and "legal fiction", above

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— **"Primary evidence"** *See* "Direct", "direct evidence", "primary", "primary evidence", "indirect", "indirect evidence" and "secondary evidence", above

— **"Property"** *See* "Lease" and "property", above

See also DEBT, FINANCIAL AND MONETARY LAWS — 'Debt, Debt Recovery and Relief' — Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(8), (2014) 5 SCC 610: (2014) 3 SCC (Civ) 254

See also PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 7, 8 and 48, (2014) 6 SCC 1: (2014) 3 SCC (Civ) 1

See also SERVICE LAW — 'Pension' — Generally, (2013) 12 SCC 210: (2014) 1 SCC (Civ) 315

— **"Propriety"** *See* "Legality", "regularity" and "propriety", above

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— **"Public interest"** *See* (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

See also HUMAN AND CIVIL RIGHTS — 'Right to Information Act, 2005', S. 8(1)(j), (2012) 13 SCC 61: (2014) 2 SCC (Civ) 131

— **"Public policy", "public policy of India" and "law of India"** *See also* CONFLICT OF LAWS/PRIVATE

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— **"Relevant facts"** *See also* "Facts in issue" and "relevant facts", above

— **"Relevant facts" and "facts in issue"** *See* (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

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— **"Res gestae", "same transaction", "are so connected with a fact in issue", "fact in issue", "contemporaneously arising out of the occurrence", "actions having a live link to the fact" and "acts perceived as a part of the occurrence"** *See* EVIDENCE ACT, 1872, S. 6, (2013) 12 SCC 17: (2014) 1 SCC (Civ) 242

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— **"Statement *as to* existence of fact"** *See* "Of/about", "as to", "statement *of/about* existence of fact" and "statement *as to* existence of fact", above

— **"Statement *of/about* existence of fact"** *See* "Of/about", "as to", "statement of/about existence of fact" and "statement *as to* existence of fact", above

— **Statutory liabilities "arising out of the land" or "arising out of the plant and machinery", "arising out of the land" and "arising out of plant and machinery"** *See* PROPERTY LAW — 'Transfer of Property Act, 1882', Ss. 54 and 55(1)(g) & (2) and Ss. 65(c), 76(c) & 108(g), (2013) 10 SCC 746: (2014) 1 SCC (Civ) 130

— **"Such"** *See* CONSTITUTION OF INDIA, Art. 26(d), (2014) 5 SCC 75: (2014) 3 SCC (Civ) 134

— **"Sufficient cause"** *See* CONSTITUTION OF INDIA — 'Article 226' — Maintainability of writ petition — Delay/Laches, Arts. 226 and 136, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713

— **"Unauthorised occupation"** *See* GOVERNMENT GRANTS, LARGESSE, PUBLIC PROPERTY AND PREMISES — 'Public Premises (Eviction of Unauthorised Occupants) Act, 1971', Ss. 15, 2(e) & (g) and 1(3), (2014) 4 SCC 657: (2014) 2 SCC (Civ) 685

— **"Value of the property" and "market value of property" — Contrasted** *See* COURT FEES — 'Andhra Pradesh Court Fees and Suits Valuation Act, 1956 (7 of 1956)', S. 37 and S. 7 r/w Ss. 24, 26, 28, 29, 34, 35, 42 and 45, (2014) 5 SCC 603: (2014) 3 SCC (Civ) 246

— **"Void"** *See also* "Inoperative or incapable of being performed", "null and void", "void" and "voidable", above

— **"Void" and "voidable"** *See* ARBITRATION — 'Arbitration and Conciliation Act, 1996', Ss. 8, 5, 11, 16 and 45, (2014) 6 SCC 677: (2014) 3 SCC (Civ) 642

— **"Voidable"** *See* "Inoperative or incapable of being performed", "null and void", "void" and "voidable", above

See also "Void" and "voidable", above

— **"Vostro"** *See* "Nostro" and "Vostro", above

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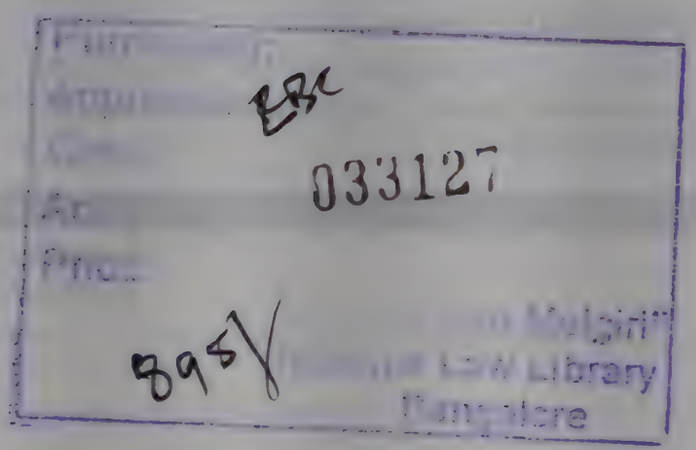

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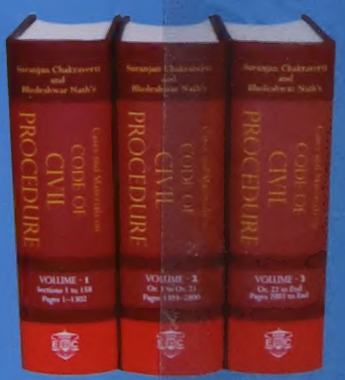

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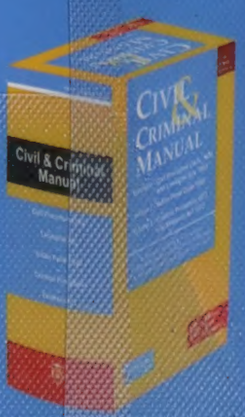

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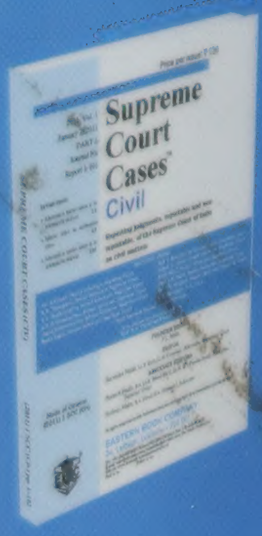

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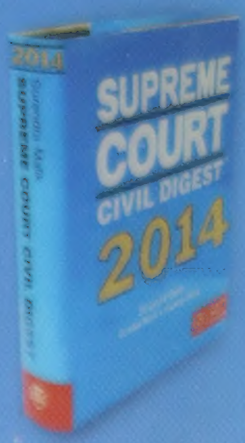

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